PART II

THE EU: HOW DOES IT WORK?

CHAPTER 3

The EU's Institutions

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Summary

No student of the EU can understand their subject fully without a careful study of its key institutions and how they work. While it may be tempting to regard EU institutions as dry and complex, they are also dynamic organisms exercising a unique mix of legislative, executive, and judicial power. In this chapter, we begin by introducing the EU's six most important institutions. We outline their structures and formal powers—that is, what the treaties say they can do—but we also focus on how they 'squeeze' influence out of their limited treaty prerogatives. We then explore why these institutions matter in determining EU politics and policy more generally.

3.1 Introduction

What makes the EU unique, perhaps above all, is its institutions. This chapter explores the six institutions that exercise the most power and influence: the European Commission, the Council (of ministers), the European Council, the EP, the CJEU, and the ECB. We draw analogies to their counterparts at the national level, but also show how they are distinct and unique. It is important to understand not just the formal powers conferred on them, but also how their informal powers have accrued over time, and how incremental power shifts take place between the various rounds of treaty reform. The institutional politics of the EU are often lively and can have important consequences.

An important point to note, at the outset, is the EU's political cycle. EP elections are held every five years (the next are scheduled for May 2024). In the aftermath of those elections, a new European Commission is appointed, the term of which coincides with that of the Parliament, albeit with a timelag in that it can take some months for the Commission to be confirmed (the current Parliament convened on 2 July 2019 and the current Commission took office on 1 December 2019). Since December 2009 the European Council has appointed its own president for a two-and-a-half-year term, which can be renewed once to make a five-year term. The first two holders of that office were renewed, thus putting that office on the same cycle as the Commission. However, fluidity is introduced into the system by the Council (of ministers), whose composition is determined by the political make-up of the EU's member state governments, which changes regularly through national elections. Member states take it in turns to chair its meetings for six months at a time.

Examining its institutions, and how they work, is essential to understanding the EU. First, it gives us a starting point from which to examine the EU's policy process. Second, it helps us to identify the diversity of actors involved and to understand how they together determine the EU's policies and indeed the shape and speed of integration. Finally, it reminds us that there remain many interesting questions still to be answered about European integration. Is it heading towards a European federal state? Or a looser, more intergovernmental body? Or a multi-tiered system? How democratic or efficient will it be? Who or what will determine the content of policies and the pace and shape of integration?

3.2 The European Commission

One of the EU's most powerful and controversial institutions is the Commission. The EU's founders were faced with a challenge. If the member states wanted to pursue common policies in certain fields, should they hand over responsibilities to a common institution, and leave it to get on with it, which could pose major questions of democratic accountability? Or should important policies be settled by national governments, thus risking endless intergovernmental negotiations and lowest common denominator outcomes?

In the end, they opted for a compromise: a common institution—the European Commission—was charged with drafting policy proposals (and implementing them once agreed; see Box 3.1). However, a separate institution—the Council—consisting of ministers representing national governments, would make (most) policy decisions on the basis of those proposals. This interplay of an institution charged with representing the general interest (Commission) and those composed of representatives of national governments (Council) or citizens (Parliament) is the essence of what became known as the **Community method** (Box 1.4). Very little can become EU legislation unless the Commission proposes it (although the Council and the Parliament can request the Commission to draft proposals).

BOX 3.1 How it really works: Who initiates policy?

The formal right to initiate proposals for policy or legislation is one of the Commission's most precious and fundamental powers. However, the origins of these same initiatives are diverse. In practice, most legislative initiatives emanating from the Commission are a response to ideas, suggestions, or pressures arising not from within its own corridors, but from other EU institutions (including the Parliament and Council, both of which have a right under the treaty to request the Commission to draft proposals—see Articles 225 and 241 TFEU), member states, and leaders. Others arise from international obligations or new trade agreements, and a growing proportion are connected to updating or amending previous EU legislation, rather than legislating in new fields. A particular effort in recent years has been to simplify, consolidate, or repeal old legislation, known as the 'REFIT' programme. In its 2020 programme, for instance, the Commission announced 43 policy objectives that would entail some 23 legislative proposals, along with two proposals to repeal (and 44 to simplify) existing legislation. In doing so, the Commission withdrew 32 proposals made by the previous Commission that had not been adopted by the EP and the Council.

The Lisbon Treaty also added a new, direct source of proposals: one million EU citizens can now sign a **European Citizens' Initiative** to invite the Commission to bring forward a legislative proposal. Of more than seventy initiatives launched, six have reached the one million threshold. While the Commission is not legally obliged to act, the route has led to legislative proposals concerning drinking water quality.

3.2.1 Tasks and powers

The treaties (Article 17 TEU) grant the Commission a number of other important tasks besides the right to propose policies. The Commission is charged with representing the 'general interest' of the Union and, in this capacity, performs a variety of tasks:

- it acts as guardian of the EU's treaties (to defend both their letter and spirit), verifying the correct application of EU legislation;
- it can be given powers to implement EU legislation and manage its programmes (see section 7.2);

- it is the competition authority for the single market, with powers to vet and veto mergers, even of companies located outside the EU but selling in its market;
- on the basis of Council mandates, the Commission negotiates international trade and cooperation agreements;
- it manages and executes the EU budget, which is adopted on a proposal by the Commission, but invariably after amendment by the EP and the Council (see Box 5.3; Box 7.2; Figure 7.1).

Taken together, these powers make the Commission one of the most powerful international administrations in existence (Kassim et al. 2013). Its powers in some economic fields are not far short of those enjoyed by national governments. However, its capacity to act autonomously is also more limited than that of a national government and its scope is limited: for example, it lacks powers that national governments have over armed forces, police, foreign policy, or the nomination of judges.

3.2.2 How the Commission is organized

'The Commission' refers to two elements of the same body: the College of Commissioners (the political executive which heads the Commission), and its administration (its permanent 'services' staffed by civil servants). The College is the powerhouse of the Commission. Like a minister in a national government, each of the 27 commissioners—one from each member state—is nominated by the prime minister or president of their own country. Commissioners are not directly elected, but they are politicians rather than civil servants (most have held high office in national politics before becoming commissioner) and hold office only with the approval of the EP. The permanent civil servants (i.e. the Commission's officials or *fonctionnaires*) are recruited normally through competitive examination and work under the College's authority. This is a unique feature of the EU: its institutions recruit its own civil servants and do not rely (much) on national appointees (except for the European External Action Service (EEAS)—the EU's diplomatic service—where seconded national diplomats amount to about one-third of its ranks).

The Commission president is elected by the EP straight after each EP election, on a proposal of the European Council, which itself is obliged to take account of EP election results in making that nomination (Corbett 2014; Dinan 2015). In other words, heads of government have to choose a candidate for president who is capable of commanding a parliamentary majority in much the same way that a national head of state has to when nominating a prime minister. Ahead of the 2014 EP elections, several European political parties interpreted this requirement to mean that the European Council should choose as Commission president the nominee of the political party with the most seats in the EP, or at least the one able to assemble a majority coalition. The European Council followed this process when it appointed Jean-Claude Juncker in 2014. However, in a controversial move, the process was

not followed in 2019 and the European Council chose as Commission President Ursula von der Leyen, who had not been a nominee of any party (see section 6.3.4), and who was approved by a narrow majority in the EP. Von der Leyen was the first woman appointed to the post (see Abels and Mushaben 2020).

Once elected by the EP, the Commission president must then agree with each head of government on the nominee from each country for the remaining members of the College of Commissioners. It is up to the Commission president to distribute policy responsibilities—known as 'portfolios'—to individual commissioners (for transport, agriculture, and so on). The one exception is the EU high representative for foreign affairs and security policy (see section 3.4), who is also a vice-president of the Commission, where the European Council collectively agrees a nominee with the president-elect of the Commission.

The prospective Commission must then present itself to the Parliament for a vote of confidence. This vote is on the college as a whole—again, much like a vote of confidence in a government in a national context. However, prior to this vote, the EP exercises its power of democratic scrutiny and holds public hearings for each individual commissioner before the parliamentary committee corresponding to their portfolio (which does not happen to ministers in most European countries).

The distribution of Commission portfolios can be controversial. Historically, portfolios dealing with international trade, the internal market, competition policy, agriculture, regional development funds, and, in recent times, environment and energy are particularly sought after. However, since the presidency of Jean-Claude Juncker (2014–19), the Commission has been organized in a more strategic way, with more senior commissioners—vice-presidents and, since 2019, executive vice-presidents as well—responsible for coordinating the work of the Commission in key policy spheres (Box 3.2). How much an individual commissioner can shape policy is nonetheless limited by the principle of collegiality: the entire College agrees all policy proposals. Once the College takes a decision at its weekly meetings—chaired by the president (if necessary by majority vote but usually by consensus)—it becomes the policy of the Commission as a whole. Key legislative and policy decisions then need approval by the Council and/or the Parliament. In this way, the Commission illustrates a key feature of the EU itself: that of institutions operating within a system of checks and balances.

BOX 3.2   Spotlight on: The evolving structure of the College

The structure of the College has evolved since 2014. This was partly a necessity, following the 2009 European Council decision to keep one commissioner per member state, despite the increased size of the EU, and partly a reflection of the need for the Commission to act in a more focused way in an ever-more-complex world. The key structural innovation has been to introduce a two-tier

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system of commissioners—with vice-presidents (or executive vice-presidents) taking on *either* core policy portfolios *or* coordinating briefs responsible for organizing the work of multiple policy portfolios.

Although there have been vice-presidents of the Commission dating back to the first Hallstein Commission (1958–62), the title historically signified no more than nominal seniority. The situation changed with the Commission of Jean-Claude Juncker (2014–19). Juncker organized his Commission in project teams, which was a major overhaul in both structure and governance. Juncker appointed six vice-presidents (in addition to the **high representative**[1]) and tasked them with taking charge of major cross-cutting policy issues. Juncker's structure was innovative insofar as it introduced a more horizontal structure to a Commission that had, up to that point, been organized vertically in silos. The horizontal/vertical issue is one that increasingly bedevils national ministries as policy problems become more interconnected—the Juncker Commission explicitly tried to overcome this.

Juncker's vice-presidents were responsible for coordinating Commission activity in pursuit of, for example, an energy union, economic growth and competitiveness, the digital single market, and interinstitutional relations and the rule of law within the EU (something that became more controversial than its description suggests as the governments of Hungary and Poland passed laws that led to democratic backsliding—see section 6.4). The Juncker Commission was generally praised for its innovative structure, more so than most similar national experiments with what are often called 'coordinating ministers' (Peterson 2017b; Kassim 2017). The von der Leyen Commission, which took office in December 2019, built on this organizational approach, organizing itself into six key 'groups'. Although some of the names of the groups—'Protecting our European Way of Life', for example—drew ire, it represented a continuation of the structure established by Juncker. The von der Leyen Commission presented itself as a 'geopolitical' Commission from the outset, chiming with the language of French President Emmanuel Macron, who sought an EU that could act with strategic purpose, first in its neighbourhood and then globally—a form of 'European sovereignty', as Macron called it, harking back to Gaullist visions of using the EU as a tool to amplify the power of its key member states (especially France—see section 2.3.1).

Debates about whether these developments symbolize a turn towards a more 'political' Commission often suffer from conceptual poverty (Nugent and Rhinard 2019). What is certain is that both Juncker and, following him, von der Leyen, have approached the organization of their Commission in a more cross-cutting, thematic, and strategic way.

[1] Since the position of **high representative** was detached from the position of secretary-general of the Council (of ministers) in 2009, the high representative is concurrently a Commission vice-president. The status befits their role as the commissioner responsible for the **coordination** of the EU's external relations.

Controversy surrounding portfolio assignments illustrates that the defence of national interests in the Commission can never be entirely removed. Commissioners take an oath of independence when they are appointed, but it is challenging for them to wholly set aside national interests. Indeed, many consider it to be an advantage that they bring in-depth knowledge of their respective countries to the Commission as part of the overall decision-making process, even if they are not formally there to represent them—that job belongs to ministers in the Council. A commissioner who merely repeats the position of his or her national government would soon lose credibility within the Commission. However, one that too obviously ignores strategic national interests may be liable for criticism at home. Commissioners therefore face a tough balancing act: they must be simultaneously sensitive to the interests of their member state but not undermine the independence of the Commission as an institution.

Commissioners each have their own private office—or *cabinet*—of around eight or nine advisers, although the president's *cabinet* is always larger. Cabinet officials are chosen by individual commissioners and may be drawn from inside or outside the Commission, and keep the commissioner informed about their own policy area(s), as well as wider developments in the Commission and Europe more generally. Most cabinets are composed largely of members of staff of the same nationality as the commissioner, but the head or deputy head of each must hail from a member state different from that of the commissioner. Member states are often criticized for seeking to place their own national officials into Commission cabinets to ensure that their interests are not overlooked. However, since new rules brought in by President Romano Prodi (1999–2004), cabinets have become more 'European'—with nearly all having at least three nationalities—and less male-dominated, with around 40 per cent of appointees being women (Peterson 2017a: 129).

Most commissioners are responsible for one or more Directorates General (DGs)—or services—that relate to their portfolio. These DGs, the equivalent of national ministries, cover the EU's main policy areas such as competition, the environment, or agriculture. A director general, who reports directly to the relevant commissioner, heads each. The Commission's administration comprises 33 DGs (or Executive Agencies with equivalent status), in addition to 16 Service Departments. In total, the Commission has approximately 33,000 officials, although about one-tenth of them are involved simply in translating or interpreting into the 24 official languages of the EU. It is thus smaller than is often portrayed in the popular press: about the size of the administration of some large cities. In day-to-day work, the dividing line between administrative civil servants and commissioners is not always self-evident. While the College is ultimately responsible for any decisions that emanate from the institution, in practice, many matters are handled further down in the administration by the permanent civil servants distributed across the various DGs (see section 5.3.1).

With successive EU enlargements, the growing size of the College of Commissioners has risked turning it from a compact executive into a miniature

assembly of 27. The 2009 **Lisbon Treaty** had provisions for a smaller Commission but also allowed member states to vary its size, leading to a decision to stick with one commissioner per member state. The move shows that there remains more concern for the Commission's legitimacy—with, for instance, one member of the College who speaks each country's language(s) and who can appear in the national media—than with its efficiency. Finding a sufficient number of responsible and interesting portfolios of relatively equal importance has proved difficult. The result has been the introduction of a *de facto* hierarchy among commissioners (see Box 3.2). In the Commission administration, new and generally younger officials from states that have joined the EU since 2004 have contributed to revitalizing and renewing the institution with fresh ideas (see Kassim et al. 2013: 245–72). The Commission can be adept at using its limited resources—for example, it was among the first institutions to conduct detailed research on climate change, highlighting the necessity of new initiatives such as an emissions trading scheme. Thus, the Commission is not simply the servant of the member states.

3.3 The Council (of ministers)

The **Council** was originally created as the EU's primary decision-making body. The treaties state that it shall consist of 'a representative of each member state at ministerial level, who may commit the government of the member state in question and cast its vote' and that it 'shall, jointly with the EP, exercise legislative and budgetary functions' and 'carry out policy-making and co-ordinating functions' (Article 16 TEU).

The Council is thus both a legislative chamber for the EU member states (as half of the Union's bicameral legislative authority, together with the EP) and the forum in which the governments of the individual member states come together to debate issues of foreign policy, and coordinate domestic policies (e.g. macroeconomic policies), that are primarily a national responsibility. It is in the Council that national interests, as seen by the government of the day in each member state, are most clearly represented and articulated.

The Council is a complex system. The treaties refer to a single Council, but as an institution, it meets in different **configurations** depending on which policy area is being discussed. For example, when agriculture is discussed, agriculture ministers meet; when the subject is the environment, it is environment ministers, and so on. There are ten different configurations of the Council, with the **General Affairs Council** (now largely comprising national Europe ministers to relieve the burden on foreign ministers, so the latter can concentrate on foreign policy) holding a co-ordinating brief. The General Affairs Council is also responsible for dossiers that affect more than one of the Union's policies, including enlargement, the budget, and the EU's overall institutional set-up, as well as preparing European Council meetings. The Council is aided by a secretariat of around 3,000 officials who play an important role in brokering deals and crafting compromises between member states. Even with their help, the burden on national ministers has increased enormously.

The agricultural, foreign, and economic ministers meet at least once a month, others from one to six times a year.

Given its core function—representing member states—it is easy to conclude that the Council (and its preparatory bodies) are purely intergovernmental. But, as **constructivists** would note (see Lewis 2005), regular ministerial meetings, informal contacts, and routine bargaining have provided the grounds for continual and close cooperation among executives from different member states. As a result, the Council has helped construct a collective identity that is more than merely the amalgamation of national views. That identity has in turn helped push the Union forward as a regional and international actor.

3.3.1 The Council presidency

Council meetings are chaired by a minister from the member state holding the rotating 'Presidency of the Council' (except for meetings of foreign affairs ministers, which are chaired by the high representative—see section 3.4). Member states take turns chairing for six months each. Although often hyped up in the media as the 'EU presidency', presidencies are, in fact, simply the opportunity for member states to chair one of the Union's institutions on a rotating basis. Holding the presidency does not confer any additional powers on the holder, but places them in the media spotlight, providing them with an opportunity to highlight a given EU policy as well as bringing their own national 'flavour' to the fore during the six-month period. The presidency's job is to build consensus across EU member states, and move decision-making forward. In doing so, the presidency arranges meetings, and in setting the Council's agenda, can determine which issues will be given priority (see Häge 2017; Vaznontyé 2020). Holding the presidency also has disadvantages. Much time and preparation is required and at times of high crisis, much can go wrong, all of which is daunting, especially for those from smaller states (see section 4.3.2).

3.3.2 Voting in the Council

In most areas, the treaties provide that a qualified majority can *approve* a Commission proposal, whereas unanimity is required to *amend* it. This is a crucial distinction, and also a key feature of the **Community method**. Some policy areas, however, require unanimity to approve any measure. Unanimity applies to sensitive matters including taxation, anti-discrimination legislation, non-legislative decisions on foreign and security policy, and constitutional questions such as the **accession** of new member states (see section 9.2.2). A simple majority, i.e. one vote per member state, is used for procedural questions. The chair of the Council decides whether, and when, to call a vote, and must do so if a simple majority requests it. Even though consensus is always sought, and usually achieved, formal votes are sometimes needed. Even then, a qualified majority requires the support of a high threshold (see Box 3.3).

BOX 3.3   How it really works: Reaching decisions in the Council

QMV now applies to most areas of Council decision-making, and any national representative on the Council can call for a vote on any measure to which QMV applies. In nearly all cases, a qualified majority requires that a proposal secures the support of at least 55 per cent of the members of the Council (at least 15 out of 27 member states), *and* that they must represent, collectively, at least 65 per cent of the EU's population. However, a blocking minority on the population criteria (35 per cent) must include at least four Council members—three member states, whatever their population, are not enough to block. In practice, only a minority of decisions subject to QMV are actually agreed by majority (Wallace and Reh 2014: 83). Pushing for a formal vote either too early, or too often, can create resentment that subsequently disrupts the mood and effectiveness of the Council. Thus, decision-making in the Council usually proceeds on the understanding that consensus will be sought, but equally that obstructionism or unreasonable opposition could be countered by a vote.

How is consensus achieved between 27 (now very disparate) states? Imagine a contentious item on the Council's agenda (e.g. health and safety regulations for workers). Perhaps a majority of states support the initiative, but some are opposed or ambivalent. Before proceeding to a vote, several attempts may be made to achieve some sort of consensus. Bargaining is most intense at the level of **Coreper**, which is the committee in which member state ambassadors to the EU meet to prepare Council meetings. Informal conversations between national representatives prepare the ground. The presidency will be particularly active, and may hold bilateral meetings to explore possible compromises. These can be ahead of meetings or at them during breaks, whether scheduled or impromptu. The objections of opposing states might be assuaged in a variety of ways, for example, by redrafting certain clauses, by the promise of later support for a favoured initiative, or by the possibility of a derogation from a policy, or a postponement of its implementation. Daily practice in **Coreper** and the Council are therefore characterized far more by the search for consensus among member states than by the various voting mechanisms.

Prior to the Lisbon Treaty, the Council legislated behind closed doors—which arguably made negotiations easier as they were shielded from public scrutiny—but left the Council vulnerable to the charge that it was the only legislative body in the democratic world that enacted legislation without the public being able to see how members voted. Since then, legislative deliberations take place in public, meaning web-streamed or televised (there is no physical public gallery). The Council—and the European Council (see section 3.5)—have felt the effects of EU enlargement most keenly, especially where unanimity is required or desired. Since the 2004 enlargement, the Council has found it increasingly difficult to push through important decisions in key areas, such as foreign policy, police cooperation, and migration. National vetoes are not necessarily more common in an enlarged EU (see Kaeding and Stack 2015). Equally, Council meetings are now more time-consuming

and not always as productive, given the increased number, and diversity, of member states (see section 4.1). A larger number of member states increases the chances of one or more outliers whose governments (or electorates) challenge the values and assumptions on which the EU is based—for example, Hungary blocked a Foreign Affairs Council (FAC) statement that was critical of China's anti-democratic activities in Hong Kong in May 2021.

3.3.3 Coreper (Committee of the Permanent Representatives)

Council decisions require extensive negotiation. Each EU member state has its own Permanent Representation ('**Perm Rep**') office in Brussels, headed by a permanent representative who has ambassadorial status. The national civil servants who staff the **Perm Reps** sit on a variety of preparatory working groups within the Council system. The fine-grained policy details are debated and largely decided at these levels, and particularly within **Coreper**. Composed of national ambassadors to the EU and their staffs, Coreper's job is to prepare the work of the Council, and to reach consensus or suitable majorities ahead of Council meetings (see Bostock 2002). Items agreed by Coreper are placed on the Council's agenda as 'A points' for formal approval: if no minister objects, they are approved. Coreper is split into Coreper II, which is made up of ambassadors overseeing strategic political, institutional, and budgetary issues, and Coreper I, which is led by deputy ambassadors, who deal with most other issues. Some sensitive or high-activity policy areas—including security, economic and financial affairs, and agriculture—have their own special preparatory committees, composed of senior officials from the member states.

To the uninitiated (and many of the initiated), Coreper and its various working parties can seem complicated. National ambassadors and senior civil servants who prepare Council meetings are assisted by numerous (around 140) working groups and committees of national delegates who scrutinize Commission proposals, put forward amendments, and hammer out deals prior to the Council meetings. The vast majority of Council decisions (around 70 per cent) are settled by Coreper II and I, before Council ministers become directly involved (Hayes-Renshaw 2017). Some view Coreper as a policy powerhouse: 'the men and women who run Europe'. For others, including Coreper's civil servants themselves, their role is merely that of assisting ministers. A civil servant's quote from some years ago remains apt: 'If ministers want to let Coreper decide, that is a ministerial decision' (*Economist* 1998). And all decisions must go before the ministers, even if they nod them through.

3.4 High Representative for Foreign Affairs and Security Policy

A major innovation took place in 2010 with the merging of two previously separate posts: the commissioner for external relations and the Council's high representative for the CFSP. The creation of the latter post in the late 1990s

reflected a desire to have a common EU spokesperson articulating the agreed member state position on key foreign policies. However, France and the UK in particular were averse to the idea of the Commission representing the EU beyond its existing external relations remit in trade, development, and humanitarian aid. Thus, the top civil servant of the Council, i.e. its secretary general, was designated as the high representative for the CFSP. This division of labour, however, proved problematic and confusing. Non-EU countries, and international organizations, were not always sure *who* was representing the EU on a given foreign policy issue. In many situations, the Union had to be represented simultaneously by the high representative and the external relations commissioner. For these reasons, the Lisbon Treaty merged the two posts. Still titled the high representative (for foreign affairs and security policy)—the post is also that of vice-president of the Commission (HR/VP), with the European Council choosing the appointee in agreement with the Commission president.

The HR/VP role is on the one hand a logical step towards bringing the tasks of the former Council high representative into the European Commission, ending the separation of foreign policy from other external policy sectors (e.g. development). Equally, it permits the Council additional authority within the Commission's external representation role. The outcome is a compromise designed to enable the EU to coordinate its foreign affairs between its own member states and institutions in a way that is recognizable for international actors, enabling it to be regarded, and indeed to act, as a regional and global leader in key areas. The HR/VP chairs the meetings of the FAC, oversees the EEAS, the EU's diplomatic service, and heads the European Defence Agency. Batora (2013) theorizes the EEAS as inhabiting the spaces between existing EU institutions, creating 'a situation in which there are different and sometimes conflicting organizational principles and practices introduced' within the EEAS. However, in the years since its establishment, the EEAS 'has earned its space as a coherence-building mechanism' (Blockmans and Wessel 2021: 11) and new informal leadership practices have since emerged in EU foreign policy.

Interestingly, the HR/VP post was originally labelled the EU 'minister of foreign affairs' in the proposed Constitutional Treaty, before the latter was abandoned. Recycling the more anodyne title 'high representative' for the post has not prevented its holder becoming a high-profile figure in representing the EU to the world. Vicere argues that the post-Lisbon foreign and security policy architecture acts as an intergovernmental catalyst for greater integration 'without greater empowerment of supranational actors' (2016: 557). However, the HR/VP remains the most explicit example of seeking to combine supranational and intergovernmental structures into a single institutional post. The first three holders of the post—Catherine Ashton, Federica Mogherini, and Josep Borrell—have each differed in their approach, with Mogherini and Borrell seeming to embed the role more centrally in the Commission (see section 8.4).

3.5 European Council (of Heads of State or Government)

The European Council began in the 1970s as occasional and informal fireside chats among heads of government (or, in the case of member states with executive presidents, such as France, heads of state). It became a regular gathering, and known as the European Council, in the mid-1970s (although the term 'summit' is still frequently heard). For a long time, the European Council was seen simply as the pinnacle of the Council system, comprising prime ministers rather than sectoral ministers. However, its composition is formally different—the president of the European Commission is also a member of the European Council alongside the heads of state or government—and the very nature and dynamics of Council meetings give it an unmistakably distinct character. The Lisbon Treaty formally made it a separate institution.

The European Council must meet at least four times a year, although six (or sometimes more) has become the norm in recent years. The treaties state that the European Council 'shall provide the Union with the necessary impetus for its development and shall define [its] general political directions and priorities' (Article 15 TEU). Even prior to the recognition of its role in the treaties, it had become the major agenda-setter of the Union. Initiatives such as direct elections to the EP, monetary union, successive enlargements, climate change strategy, and major treaty reforms have all been agreed, or endorsed, at European Council level. The European Council is not a legislating institution, but it does set and direct the EU's overall policy agenda by adopting key 'conclusions' at its meetings. In the words of Herman Van Rompuy, European Council President between 2009 and 2014, 'the European Council works by keeping out of day-to-day business which the other institutions do much better' (in the well-tested framework of the Community method), 'yet springing into action to deal with the special cases—changing the treaty, letting new members in the club, dealing with a crisis. In all these cases it draws upon the collective legitimacy of its members' (Van Rompuy 2012).

The European Council's other broad function is problem solving. Issues that cannot be resolved within either Coreper or the Council (of ministers) are often settled at this elevated political level. Sometimes this is through informal persuasion. At other times, European leaders strike 'package deals' that trade off agreements on one issue (e.g. regional spending) in exchange for concessions on another (e.g. agricultural reform), settlements which sectoral ministers cannot easily make. Serious deadlocks on the finances of the Union have often been resolved only through such deals in late-night sittings. The European Council also nominates the president of the Commission, and the governor and board members of the ECB.

The presidency of the European Council used to rotate in tandem with that of the Council (of ministers). With the Lisbon Treaty, it was agreed that heads of state or

government would choose their own chair for a longer, two-and-a-half-year term (renewable once). The first such President, Herman Van Rompuy took office on 1 January 2010, leaving his post of prime minister of Belgium (see Barber 2010). Donald Tusk succeeded him in 2014, leaving the post of prime minister of Poland. In 2019, another Belgian Prime Minister, Charles Michel, was chosen. Belgian prime ministers have particular experience of having to find consensus among disparate coalition partners using more than one language.

The creation of a 'permanent' president was driven largely by a desire to enhance the efficiency and continuity of the European Council's work, which had expanded and created significant pressures on national heads of state or government under the previous rotating system. In addition, the task of representing the EU externally at various international summit meetings, while at the same time representing their own country, was felt to be inappropriate.

Member states with an intergovernmentalist view of the EU saw the European Council president as a useful counterweight to the president of the Commission. Many French observers, given their domestic institutional system, regard the president of the European Council as a sort of *président* of Europe, with the Commission president demoted to the status of a French prime minister: that is, devoted largely to internal affairs and even then deferring on major decisions to the president of the European Council. However, not all share that view. The first European Council President, Van Rompuy, described himself as being less than a *président* but more than a chairman: a facilitator, not a dictator. A series of crises that confronted the EU from 2009 onwards has led some to observe an increased role for the European Council in decision-making (see section 4.3.3).

3.6 The European Parliament

The EU is unique among international organizations in having an elected parliament: the EP is the only directly elected multi-national parliament with significant legislative powers in the world. Some saw the creation of a directly elected parliament as a means towards a more 'federal' system in which the Union would derive legitimacy directly from citizens instead of exclusively via national governments. Others simply saw the need to compensate the loss of national-level parliamentary power, which is inherent in pooling competences at European level, with a supranational scrutinizing and law-making institution.

To its admirers, the Parliament represents the voice of European citizens in elected, accountable European decision-making. But it also has its critics: in contrast with most national parliaments, it cannot directly initiate legislation and its budgetary powers cover only spending, not the sources of revenue. Its housekeeping arrangements remain challenging and expensive: member states attached a protocol to the EU treaties requiring it to divide its activities between Brussels (three weeks out of four) and Strasbourg. The multiplicity of languages means that its debates sometimes lack the cut-and-thrust found in many national parliaments. Until 2014, there was no visible link between the outcome of the parliamentary elections and the composition of the executive, a situation that voters are used to at the national level (see section 6.3.4). Turnout in EP elections is also historically lower than in most national (but not local) elections in Europe, though the 2019 election saw turnout increase to its highest level since 1994, at 51 per cent.

However, the EP exercises its legislative powers forcefully compared to national parliaments, which rarely amend or reject government proposals. Because no executive or any governing majority controls it, the EP can use its independence to considerable effect. Each successive treaty change has also strengthened the role of the Parliament. The Parliament is now a legal and political equal to the Council in deciding almost all legislation, as well as the EU budget, and the ratification of international treaties. The EP also elects the president of the Commission, and confirms (and can dismiss) the Commission as a whole. Its members (MEPs) are able to network across the EU's institutions and with national governments, interest groups, and non-governmental organizations (NGOs).

The Lisbon Treaty caps the EP at 751 members (currently 705 following the UK's withdrawal from the EU) with a minimum of six, and a maximum of 96 seats per member state, degressively proportional to population. It has members from opposition parties as well as governing parties in every member state and therefore has a considerably higher degree of pluralism than the Council. Most dividing lines are political rather than national. Indeed, MEPs sit in political groups, rather than in national blocs. Although there are over 150 national parties, almost all MEPs coalesce into (currently seven) Parliametary Groups, most of which correspond to familiar European political families: Liberals, Socialists, Christian Democrats, Greens, and so on (Table 3.1). These groups must be distinguished from—although they are closely connected to—European political parties (see Box 6.5). The EP, despite real linguistic challenges, seems to have had the least difficulty absorbing new members after EU enlargements (see Donnelly and Bigatto 2008). Moreover, the quality of MEPs from the post-2004 enlargement states generally has been high, with many having held important positions (including presidents and prime ministers).

The EP's Parliamentary Groups have become more cohesive over time and the principal cleavage in the EP is political (or ideological), not national (Hix et al. 2009; Bowler and McElroy 2015). That dynamic reflects a form of pan-European politics that raises interesting questions about the nature of democracy and representation in the EU (see section 6.3). The leaders of each political group, along with the Parliament's president, together constitute the 'Conference of Presidents', which sets the EP's agenda. But, like most national parliaments, the detailed and most important work of the EP is carried out in some 20 standing committees, mostly organized by policy area (such as transport, agriculture, or environment), and three subcommittees, occasionally supplemented by temporary committees or committees of inquiry. The committee system allows detailed scrutiny of proposals by members who are, or become, specialists.

TABLE 3.1   The European Parliament's political groups*

Group name	Ideology	Seats (705 total)
European People's Party (EPP)	Centre-right, conservative, Christian Democrat, pro-European.	175
	Includes: German Christian Democrats, Fine Gael (Ireland), Forza Italia (Italy), Les Républicains (France), People's Party (Spain).	
Progressive Alliance of Socialists and Democrats (S&D)	The political group of the Party of European Socialists (PES).	146
	Centre-left, social democratic, pro-European.	
	Includes: German Social Democrats, French Socialist Party, Italy's Democratic Party, Spanish Socialist Workers' Party.	
Renew Europe	The political group of the Alliance of Liberals and Democrats for Europe (ALDE) and the European Democratic Party (EDP).	97
	Centrist, liberal, pro-European.	
	Includes: En Marche! (France), Free Democratic Party (Germany), Fianna Fáil (Ireland), Italia Viva (Italy), Ciudadanos (Spain).	
Identity and Democracy Group (ID)	Right- to far-right, populist, nationalist, eurosceptic.	74
	Includes: Austrian Freedom Party, Danish People's Party, Finns Party, French National Rally, Alternative for Germany, Lega (Italy), Dutch Party for Freedom.	
Group of the Greens / European Free Alliance (Greens/EFA)	The political group of the European Green Party, the European Free Alliance, the European Pirate Party, and Volta Europa.	73
	Green, pro-European (some federalist), participatory democracy, devolution/regionalism.	
	Includes: predominantly member state Green parties.	
European Conservatives and Reformists Group (ECR)	The political group of the European Conservatives and Reformists Party and the European Christian Political Movement.	63
	Conservative, centre-right to right wing, (soft) eurosceptic.	
	Includes: Law & Justice (Poland), Brothers of Italy, Vox (Spain), Civic Democratic Party (Czech Republic).	

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Group name	Ideology	Seats (705 total)
The Left group in the EP (GUE/NGL)	The political group of the Party of the European Left, the Nordic Green Left Alliance, Now the People!, and Animal Politics EU.	39
	Democratic socialism, left- to far-left wing, (soft) eurosceptic.	
	Includes: Syriza (Greece), *Die Linke*/The Left (Germany), La France Insoumise, Podemos (Spain).	

Notes: *as of 1 May 2021.
Twenty-five MEPs are required to form a group, and at least one-quarter of the member states must be represented within the group. MEPs cannot belong to more than one group. Some members do not belong to any group and are known as 'non-attached' or *non-inscrits*, of which there are currently 38. As of 1 May 2021 the most prominent *non-inscrits* are the MEPs representing Hungary's Fidesz party (part of the EPP until March 2021) and Italy's Five Star Movement (part of a now disbanded eurosceptic populist group until 2019).

3.6.1 The powers of the EP

The Parliament's powers fall under four main headings: legislative, budgetary, scrutiny, and appointments. The Parliament's legislative powers were originally very weak, having only the right to give an opinion on proposed legislation (see Box 3.4). After successive treaty changes, the EP now co-decides nearly all EU legislation in what amounts to a bicameral legislature consisting of the Council and the Parliament. What is now, revealingly, called the **Ordinary Legislative Procedure (OLP)** requires that the Council and the Parliament agree a text in identical terms before it can be passed into law (see Figure 5.1). International treaties or agreements are subject to the **consent procedure**: the Parliament has the right—in a yes or no vote—to approve or reject the agreement. When it comes to **budgetary** matters, the Lisbon Treaty also provides for a form of co-decision.

BOX 3.4   How it really works: How does the EP 'squeeze' power?

The EU's Parliament has tended to make the most of whatever powers it has had under the treaty at any given moment. Even when it was merely consulted on legislation, the institution developed techniques, such as the threat of delay, to make its influence felt. In budget negotiations, the EP uses its power to sign off—or not—on the annual budget selectively but effectively.

Similarly, the EP has stretched its powers to oversee the Commission. For example, under the treaty, the Parliament has only a collective vote of confidence in the

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> Commission before it takes office and no right to vote on individual commissioners. Yet, starting in 2004, it insisted that it would not hold its vote until every candidate commissioner had appeared before the parliamentary committee corresponding to their prospective portfolio for a three-hour public hearing. At those first hearings, concerns were raised about Italian Commissioner-Designate Rocco Buttiglione, who had made statements that homosexuality was 'a sin' and that women 'belonged in the home' (Peterson 2017a: 120). These comments caused widespread consternation, especially as his portfolio was to include civil liberties. As it became clear that Parliament might vote to reject the entire Commission, President-elect Barroso formally withdrew the team on the eve of the vote and came back a few weeks later with a new College from which Buttiglione had been dropped. Note that the Parliament did not have *de jure* power to force the withdrawal of Buttiglione, but in practice, it did just that. At every subsequent set of confirmation hearings (2009, 2014, and 2019) one or more of the candidate commissioners has been withdrawn and replaced as a result of concerns expressed by the EP.

As highlighted in Box 3.4, the Parliament also exercises scrutiny of the Commission (and, to a degree, other institutions and agencies). Its oversight is exercised via its right to question (through written questions or orally at question time), to examine and debate statements or reports, and to hear and cross-examine commissioners, ministers, and civil servants in its committees. The Parliament also approves the appointment of the Commission and, more spectacularly, can dismiss the Commission (as a whole) through a vote of no confidence. The latter is considered to be a 'nuclear' option—a strategic, reserve power that requires an absolute majority of all MEPs and a two-thirds majority of all votes cast. As in most national parliaments, which do not make regular use of their right to dismiss the government, its very existence is sufficient to show that the Commission must take due account of Parliament.

This power was fully exercised only once, in 1999, resulting in the fall of the entire Commission under the presidency of Jacques Santer. Even then, the Commission resigned prior to the actual vote, once it was clear that the necessary majority would be obtained. One outcome of this particular episode was a treaty change permitting the president of the Commission to dismiss individual members of the Commission (which the EP cannot do). Thus, if the behaviour of a particular commissioner gives rise to serious parliamentary misgivings (as the former French Prime Minister Edith Cresson's did in the Santer Commission), the president of the Commission can act to retain the EP's confidence (Peterson 2017a: 114). Besides the Commission, the Parliament also elects the European ombudsman (Box 3.6) and is consulted on appointments to other EU posts.

In short, the EP's powers have grown significantly since direct elections were first held in 1979 (Hix and Høyland 2013). However, some still question its ability to add legitimacy to the EU's overall decision-making. The claim of the EP to represent the citizenry of the EU is undermined by relatively low turnouts for its elections (just over 50 per cent in the last EP elections, 43 per cent in the previous two).

Since the 2014 election, voters have elected a high number (up to a quarter) of eurosceptic MEPs, many of whom question the very existence of the EU, with such parties topping the poll in some member states (including France and Italy). The Parliament's image—accurate or not—as a 'gravy train' does not help. Ultimately, the Parliament's future role is tied up with larger questions of democracy and power in the EU (see section 6.1).

3.7 Court of Justice of the European Union

The CJEU comprises the European Court of Justice (ECJ) and the General Court (previously known as the Court of First Instance). The ECJ sits at the pinnacle of the EU legal order and is comprised of 27 judges—one appointed by each member state—plus 11 advocates-general who draft and present impartial independent 'opinions' on cases assigned to them, for the judges. Located in Luxembourg, it operates in chambers of three to five judges, except when the issues raised are considered to be of exceptional importance, when it can sit as a Grand Chamber of fifteen judges or as a full plenary of all twenty-seven. According to the EU treaties, the role of the CJEU is to ensure that 'in the interpretation and application of the treaties, the law is observed' (Article 19 TEU). In this sense, the Court is powerful: it is the final arbiter in legal disputes on EU law, such as between EU institutions, or between them and member states, between EU citizens and EU institutions, or between the member states themselves. The Court ensures that the EU institutions do not stray beyond the powers given to them. Conversely, it also ensures national compliance with the treaties and the legislation that flows from them, and it has the right to fine member states that breach EU law. Altogether, just over 40,000 judgments and orders have been given since 1952.

EU law is qualitatively different from international law in that individuals can seek remedy for breaches of the former through their own domestic courts, which then refer points of European law to the CJEU. The process allows national courts to ask the CJEU for a **preliminary ruling** on the European facet of a case before them. The national courts, in judging cases, then use such preliminary rulings. Over time, this method has shaped national policies as diverse as the right to advertise abortion services across borders, roaming charges for mobile phones, and equal pay for equal work. The process of integrating national courts into a cooperative system to ensure that EU law is applied is an important component of the CJEU's influence (Vauchez 2015).

The CJEU has sometimes interpreted the treaties in a way that furthers integration. Its approach to the treaties—treating them as akin to a constitutional charter (see Box 3.5)—has helped transform the EU from an international organization into an entity with polity-like features (Weiler 1991). In the 1960s, it was crucial in giving real substance to the EU legal system. Three landmark decisions stand out. In the 1963 *Van Gend en Loos* case, the Court established '**direct effect**': the doctrine that EU citizens had a legal right to expect their governments to adhere to their

European obligations. In 1964 (*Costa v ENEL*), the Court established the '**supremacy**' (or **precedence**) of EU law: if a domestic law contradicts an EU obligation, European law prevails. There would be no point agreeing common laws if individual member states could then ignore them. Later, in the 1979 *Cassis de Dijon* case, the Court established the principle of '**mutual recognition**': a product made or sold legally in one member state—in this case a French blackcurrant liqueur—cannot be barred in another member state if there is no threat to public health, public policy, or public safety. This principle proved fundamental to the single market because it established that national variations in standards could exist as long as trade was not unduly impeded.

These judgments took place in a period normally characterized as one of stagnation and 'Eurosclerosis', when political integration seemed paralysed. Scholars who take inspiration from **neofunctionalist** thinking often cite evidence from this period to undermine the intergovernmentalist claim that national governments alone dominate the rhythm of integration (Stone Sweet 2010; and see section 1.2.1). There is broad agreement that the CJEU's influence 'rivals that of the world's most powerful courts' (Stone Sweet 2010: 2) and that it has helped to advance integration in a distinct, legal way (Schmidt 2018). In the years since the *Cassis* ruling, the Court has issued judgments that, among other things, incrementally extended the scope of EU citizenship rights—the *Rottmann* and *Zambrano* cases being particularly noteworthy (see Lenaerts 2015)—and established EU law as enjoying primacy over even a UN Security Council resolution (the *Kadi* case—see Kokott and Sobotta 2012).

BOX 3.5   Spotlight on: 'Constitutional' Courts in the EU and the US

The ECJ—like the EU more generally—is in many ways *sui generis*: an international body with no precise counterpart anywhere in Europe or beyond. But interesting parallels, as well as contrasts, can be drawn between the ECJ (at the apex of the CJEU) and the US Supreme Court. The US Supreme Court exists to uphold the US Constitution, whereas the EU has no such constitution. Yet even here, the difference may not be as stark as it appears. The ECJ must uphold the EU's treaties. For some legal scholars, the cumulative impact of Court decisions that have interpreted the treaties amounts to a 'quiet revolution' that effectively transformed the treaties into a constitution insofar as they constitute the basic rule book of the EU (see Weiler 1999).

One difference is jurisdiction, or the power to hear and decide cases. The jurisdiction of the US Supreme Court is vast. It can hear all cases involving legal disputes between the US states. Even more important is its power to hear cases raising constitutional disputes invoked by any national treaty, federal law, state law, or act. The ECJ's jurisdiction is more confined. While its rulings have had a fundamental impact on the single market and the EU more generally, many matters

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of national law and most non-economic disputes between states fall outside its remit. Moreover, the ECJ cannot 'cherry pick' the cases it wants to hear, as the US court can. Finally, recruitment, appointment, and tenure differ. Federal institutions are the key players in appointing US Supreme Court judges—the president nominates a candidate and the Senate confirms (or not). In contrast, ECJ judges are appointed by member states. The former are appointed for life, the latter for a six-year renewable term, and with little of the political controversy surrounding Supreme Court appointments.

Equally, there are interesting parallels between the two. The rulings of both the ECJ and Supreme Court take precedence over those of lower or national courts. Lower courts must enforce these rulings. Like the US Supreme Court in its early decades, the ECJ's early decisions helped consolidate the authority of the Union's central institutions. Perhaps the most interesting similarities involve debates surrounding these courts' powers and political role. In the case of the US Supreme Court, concerns about its politicization and activism are well known, especially in its rulings on abortion, racial equality, and campaign spending. In the EU too, albeit less spectacularly, concerns about the Court's ability to push forward or limit integration, and the expansion of its authority, have propelled it into political debates about the future of Europe. Controversy about its role featured, for example, in the 2016 EU referendum in Britain, despite confusion between the ECJ and the quite separate (non-EU) **European Court of Human Rights** (see Box 6.1). Thus, whatever their differences, both the ECJ and US Supreme Court raise fundamental questions about the proper limits of judicial review and the role of courts in democratic societies more generally.

Debates continue as to whether the Court is too active—interpreting the texts adopted by democratically accountable politicians in the EP and the Council beyond what they intended (Stone Sweet 2010; Grimm 2017). However, with the exception of a 2021 ruling by Poland's highest court (EURACTIV, 2021b), no member state has explicitly refused to respect its judgments and compliance with its rulings is high (Saurugger and Terpan 2017). In practice, the Court has to interpret the texts as they have been adopted and the CJEU can only rule on matters referred to it.

3.8 European Central Bank

The ECB was established in 1998 ahead of the launch of the final stage of EMU in January 1999 (see section 2.4.1). The ECB is charged with a fundamental task: formulating monetary policy for member states that use the euro, including ensuring monetary stability, setting interest rates, and issuing and managing the currency. The ECB's main decision-making body is the Governing Council, made up of the governors of the national central banks of the (currently) 19 states in the Eurozone alongside the members of the Executive Board. The Board, which is

responsible for the day-to-day running of the ECB, is made up of the ECB's president and vice-president, as well as four other members, all of whom are appointed at staggered intervals for non-renewable eight-year terms by the European Council acting by qualified majority (in practice, it is the 19 Eurozone states, not all 27 EU member states, who make the appointments). The ECB president has become a powerful figure. The ECB works closely with the Eurozone's national central banks (forming collectively the 'Eurosystem') and with all 27 EU national central banks (forming collectively the 'European System of Central Banks'). In its first decade of operation the ECB, and particularly its Governing Council, tended to make decisions by consensus. However, the sovereign debt crisis, and the contentious policy decisions it required within the Eurozone, increased the number of votes taken (Henning 2017: 46).

The ECB is headquartered in Frankfurt and modelled on the fiercely independent German Bundesbank, which was the dominant central bank in the EU for many years before the launch of EMU (Dyson and Featherstone 1999). During the 1990s, the vast majority of central banks were reformed in a way that gave them greater operational independence. Such reforms were introduced in the belief that the best way to secure stable prices and stable money over the medium to long term was to appoint expert economists to manage monetary policy, rather than leaving it in the hands of politicians who lacked expertise and were often driven by short-term electoral calculations. This was part of a broader trend of delegating policy responsibility to non-majoritarian institutions such as courts and regulatory agencies (see Thatcher and Stone Sweet 2002). The ECB was thus not unique in this regard.

Independent central banks are given mandates—instructions about what their policy decisions should aim to achieve—by democratically accountable political leaders. The ECB's principal mandate is price stability, defined as achieving inflation below but close to 2 per cent over the medium term for the Eurozone. The ECB is secondarily tasked with encouraging balanced growth and full employment but not in ways that undermine the principal mandate of price stability. The Bank's independence and power undoubtedly help ensure monetary stability but also have raised concerns about transparency and accountability. It must report to the EP several times a year and also has to report to the Council. But its deliberations were until recently not made public and it enjoys considerable independence from other institutions or member states.

A major critique of the design of EMU was that it was 'asymmetric': monetary policy was supranationalized across a diverse set of countries, whilst fiscal and economic policy was left to the national governments with, at most, loose intergovernmental coordination (Verdun 1996). Partly with a view to mitigating this asymmetry, the Eurogroup was established at the same time as the ECB as an informal meeting of the finance ministers of Eurozone states—joined by the ECB president and relevant commissioners—to coordinate economic and fiscal policy. The Eurogroup tends to meet on the eve of meetings of the economic and financial affairs configuration of the Council and its members elect a president from within their ranks to serve for a two-and-a-half-year term, renewable once. In the years since the sovereign debt crisis the fiscal and economic aspects of EMU have been developed considerably, with the Commission and Council working closely

together to monitor national budgets and potential economic imbalances, as well as to coordinate socio-economic policy (see section 7.5.1). The leaders of Eurozone states sometimes meet on the margins of a European Council meeting, chaired by the president of the latter, in a format called 'Euro Summits'.

In addition to triggering a burst of action to further develop EMU, the sovereign debt crisis changed the ECB's role in three key ways. First, the ECB joined with the Commission and the International Monetary Fund—forming 'the Troika'—to assist member states that were struggling to borrow in the capital markets (Henning 2017). Second, after an initially cautious approach to the crisis, from May 2010 the ECB launched a series of interventions in the markets for the sovereign debt of Eurozone states and stepped in to provide liquidity to struggling banks in the Eurozone. This represented a controversial expansion of the ECB's functions but the leadership shown, especially under President Mario Draghi from November 2011, has been assessed as instrumental in overcoming the acute stage of the crisis (see Verdun 2018).

Third, the development of the EU's banking union transferred responsibilities to the ECB for supervising banks and financial institutions in the Eurozone and in non-Eurozone member states that choose to opt in. The ECB supervises the largest banks directly and works closely with national bank supervisors to monitor the entire financial sector—the Single Supervisory Mechanism (SSM). A Single Resolution Mechanism (SRM) provides for the orderly restructuring of failing banks (see section 7.5.1).

3.9 Why Institutions Matter

The relationship between the main institutional players is constantly changing. Power shifts both across and between them, not only as a result of formal treaty changes, but also due to changes in practice, the assertiveness of the various actors, agreements between EU institutions, and Court judgments. For instance, the ability of the Council to impose its view has declined as the bargaining power of Parliament has increased. Equally, the European Council's growing power to set the EU agenda has usurped the Commission's traditional and legal right of initiative. The establishment of a full-time president of the European Council also challenges the primacy of the president of the Commission. Rules and treaty provisions serve as the basis of authority from which the institutions can and do act. But formal powers are only starting points: knowing how the EU institutions exploit, compete for, and ultimately share power is also crucial for grasping how the EU works.

The EU's institutions help illustrate the three central themes of this book: (1) that the EU is an experiment in motion; (2) the importance of power sharing and consensus; and (3) the capacity of the EU structures to cope with the Union's expanding size and scope. The very fact that some powers are wielded at a level beyond the nation state, albeit with the involvement of their governments, remains controversial in some countries and was highlighted by Leave campaigners in the 2016 UK referendum (see section 10.2).

3.9.1 Experimentation and change

The EU's institutional system has evolved considerably since the establishment of the European Coal and Steel Community in 1951. A variety of pressures have combined to encourage task expansion and the reinvention of institutions over time. Often, gaps in the capacity of the EU to respond to events and crises have initially resulted in an ad hoc expansion of the informal powers of the institutions. For example, the need for common action on the environment meant that informal environmental agreements predated formal competences introduced by the treaties. Sometimes member states agreed on the need to establish informal cooperation in new areas, but were not initially ready to be legally bound by the treaties, as in the gradual expansion of the powers of EU institutions focused on justice and home affairs (see section 7.5.2). Studying the institutional dynamics of the EU allows us not only to understand the extent to which the EU is subject to experimentation and change, but also to pose key questions about where this process might be headed.

3.9.2 Power sharing and consensus

Scholars of European integration have long and fiercely debated where power lies in the EU. Do the EU's institutions drive the integration process forward? Or do national governments remain in control? Neofunctionalists and intergovernmentalists have taken up the two sides of this debate, respectively. Both sides can cite changes in formal EU rules to buttress their case. For example, as the Parliament has gained powers and member states have accepted more proposals on the basis of QMV, it could be claimed that supranationalism is on the rise. Equally, as the European Council has come to dominate high-level agenda setting, and some EU states have opted out of certain policies (such as monetary union), it could be said that intergovernmentalism is holding strong. In recent years, as the EU has responded to, among other things, the Eurozone crisis, researchers continue to debate whether we have entered a period of a 'new intergovernmentalism' (Bickerton et al. 2015a) or not (Schimmelfennig 2015). The 2014 refugee crisis seemed to push towards divergent national policies, the climate crisis towards a more integrated approach, and the COVID-19 crisis led to both divergence and common actions on procurement, with varied results. The economic fallout of the pandemic led to the 'Next Generation EU' €750 billion stimulus package, financed by the issuance of common debt, through EU sovereign bonds, hailed by some as a 'Hamiltonian' move towards greater fiscal union (see Figure 10.2).

However, depicting integration as a pitched battle between EU institutions and the member states misses the point. Dividing lines are often within each of the above. Competition is fierce, but so, too, is the search for consensus. Enormous efforts undertaken within the EU's institutions usually help forge agreements acceptable to all. Focusing on the institutions and how they cooperate or compete with each other and other actors helps us to begin to make sense of the EU as a complex policy-making process.

3.9.3 Scope and capacity

The step-by-step extension of the scope of the EU's activities is one thing. Its capacity to deal with those subjects that fall within its remit and to cope with successive enlargements is another. Have the institutional structures (and budget) originally conceived for a Community of six member states been sufficiently adapted to deal with the demands of 27 or more (see Box 3.6 and Box 3.7)? In most policy fields, the EU has managed to avoid decision-making gridlock despite enlargement, although arguments continue as to whether this has been at the cost of having to settle for lowest common denominator solutions. Certainly, in areas that require unanimity within the Council (particularly foreign and security policy), the EU is vulnerable to slow, cumbersome decision-making and even total blockage at the instigation of one or another member state.

Strengthening European cooperation may appear to equate to empowering its institutions. Yet, policy cooperation has been extended in a variety of different ways that have widened the scope of the EU without necessarily expanding the powers

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BOX 3.6   Spotlight on: Other institutions and bodies

The **European Court of Auditors (ECA)**, with 27 members, is charged with scrutinizing the EU's spending and financial accounts. Acting as the 'financial conscience' of the EU, the Court increased its visibility a decade ago when it uncovered some significant instances of mismanagement, and even fraud (see Laffan 2017). Its annual and specialized reports consist mainly of dry financial management assessment.

Several smaller bodies not classified as institutions (therefore having fewer rights at the CJEU) carry out a primarily representative function (see Rowe and Jeffery 2017). For instance, the **European Economic and Social Committee (EESC)** represents employers, trades unions, and other social or public interests (such as farmers or consumers) in EU policy-making. Chosen by the national governments, these representatives serve in a part-time function advising the Commission and other institutions on relevant proposals. Their opinions can be well researched but are not usually influential.

The **European Committee of the Regions (CoR)** suffers from a lack of influence similar to the EESC. Created by the Maastricht Treaty, the CoR must be consulted on proposals affecting regional interests (cohesion funding; urban planning) and can issue its own opinions and reports. However, its membership is debilitatingly diverse (powerful regional ministers from Germany and Belgium sit alongside representatives from Irish local councils). It has yet to exert the influence its proponents originally envisioned. But perhaps its real role is as a channel of communication across several layers of governance.

The EU **ombudsman** is empowered to receive complaints from any EU citizen or any natural or legal person residing in the member states concerning instances

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of maladministration in the activities of the Union institutions or bodies (other than the Court in its judicial capacity). The EP chooses the ombudsman after each parliamentary election for the duration of its term of office.

The **European Investment Bank (EIB)** is the world's biggest, public, long-term lending institution. It supports the development of infrastructure and economic development projects. The EIB's shareholders are the member states. It can use the collective collateral of its shareholders to borrow on capital markets at favourable rates, enabling it to finance capital projects. In 2019 it lent over €63 billion.

of institutions. The careful exclusion of the CJEU, and the weaker role of the Commission and the EP, in most aspects of foreign and security policy are examples. So is the gradual bonding of European leaders inside and outside the formal confines of the European Council, which can assist in re-imagining narrow national interests in more collective ways (see Van Middelaar 2013). Finally, if there is one lesson to be learned from the study of EU institutions, it is their remarkable ability to adapt as new requirements are placed upon them. This chapter has tried to show that while the capacity of EU institutions may be limited, their ability to adapt is often impressive.

3.10 Conclusion

The EU's institutional system is complex. But so, too, is the diverse polity it helps govern. We have attempted to cut through this complexity by focusing on the powers of the six most important institutions and how they are used (other institutions, bodies, and agencies are presented in Box 3.6 and Box 3.7). We have stressed the importance of both cooperation and rivalry between the institutions. Each institution may have its own agendas, but nearly all of the important decisions require some (and, usually, quite a large) measure of consensus spanning the EU's institutions and across member states within the Council. The institutions are as interdependent as the member states that make up the EU.

Moreover, EU institutions do not operate alone. Today they must deal with an ever-broader range of actors, especially because of the EU's enlargement, but also because organized interests have become increasingly active. As the EU takes on new tasks, the burden on its institutions will increase. The EU's growing role in areas such as migration, foreign and defence policy, food safety, and climate change means that other agencies and bodies (including international ones that transcend Europe itself) will join the institutional mix that helps govern EU politics. Further institutional reform may prove both necessary and inevitable to cope with the increasing size and policy scope of the EU. But given the challenge of obtaining unanimous support for treaty change, institutional reform—like so much else in the EU—is likely to be incremental and pragmatic rather than spectacular or far-sighted.

BOX 3.7   Spotlight on: EU agencies

There are over 40 **European agencies** established by the EU to manage a range of diverse issues (see Kelemen and Majone 2017). Typically, they have a governing body appointed by the EU institutions and member states, and perform technical functions on a pooled basis, avoiding the costs of duplicated efforts by member states, pooling resources, or coordinating national efforts.

A number of agencies are associated with **internal security** and border management (see section 7.5.2) and work to facilitate cooperation among the member states in: countering terrorism, cyber-crime and other serious and organized forms of criminal activity (**Europol**); cross-border investigations and criminal prosecutions (**Eurojust**); managing the external borders of the Schengen area (**Frontex**); and asylum policy, including the implementation of the Common European Asylum System (the **European Asylum Support Office**).

Following the Eurozone crisis a new EU framework for supervising the finance sector was established. The framework brings together member state agencies responsible for supervising financial services with three European Supervisory Authorities. Collectively, the three authorities are responsible for what is called 'micro'-prudential supervision—the supervision of: individual institutions such as banks (**European Banking Authority**); financial markets and securities (**European Securities and Markets Authority**); and insurance companies and pension funds (**European Insurance and Occupational Pensions Authority**). Alongside them is the **European Systemic Risk Board (ESRB)**, responsible for 'macro'-prudential supervision—the supervision of the financial system as a whole with the aim of preventing or mitigating systemic risks (see section 7.5.1).

Finally, the **European Medicines Agency (EMA)** facilitates the development of—and access to—medicines, evaluates applications for marketing authorization, and monitors the safety of medicines in the EU. The EMA was prominent during the COVID-19 pandemic, as the agency responsible for recommending vaccines for use in the EU.

❓ DISCUSSION QUESTIONS

1. Which EU institution is most 'powerful' in your view and why?

2. How has the balance of power between the EU's institutions shifted over time?

3. Which factors have driven institutional changes and reforms over time?

4. Is the relationship between the institutions characterized more by cooperation or conflict?

5. Which reforms to the EU's institutions are most urgently needed?

FURTHER READING

Hodson and Peterson (2017) is a comprehensive analysis of the EU's institutions. Helpful examinations of individual institutions include Kassim et al. (2013) on the Commission, Puetter (2014) on the European Council and Council (of ministers), Wessels (2016) on the European Council, Corbett et al. (2016) on the EP, Schmidt (2018) on the CJEU, and Verdun (2017) on the political role of the ECB. Weiler (1999) is a classic, provocative set of essays on the CJEU and the EU's legal identity. Christiansen (2020) considers how the EU institutions might further consolidate integration. Kassim and Laffan (2019) offer an evaluation of the 'political Commission' and the Juncker presidency.

Christiansen, T. (2020) 'The EU's new normal: Consolidating European integration in an era of populism and geo-economics', *Journal of Common Market Studies*, 58/s1: 13–27.

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Verdun, A. (2017) 'Political leadership of the European Central Bank', *Journal of European Integration*, 39/2: 207–21.

Weiler, J.H.H. (1999) *The Constitution of Europe* (Cambridge: Cambridge University Press).

Wessels, W. (2016) *The European Council* (Basingstoke: Palgrave-Macmillan).

WEB LINKS

https://europa.eu/european-union/contact/institutions-bodies_en

The EU's institutions, bodies, and agencies have their own websites.

https://www.europarl.europa.eu/thinktank/en/home.html

The EP's think tank (research service) prepares reviews and papers about EU institutions and policies;

https://www.consilium.europa.eu/en/documents-publications/library/

as does the library of the Council.

https://media.ed.ac.uk/media/10+things+about+EU%21/1_80ra79kc

A nine-minute video, '10 things you need to know about the EU's institutions'.

http://ec.europa.eu/stages/

Anyone brave enough to consider working as an intern or *stagiaire* in one of the EU's institutions can find out more here.

http://www.euractiv.com/

For recent updates on institutional developments, especially in relation to treaty reform.

http://www.uaces.org/

The University Association for Contemporary European Studies (UACES) hosts regular workshops and lectures on the institutions in the UK and (occasionally) on the continent.

http://www.eustudies.org

The European Union Studies Association (EUSA) is a good source of information about conferences and lectures held in the US.

Access the online resources to take your learning and understanding further, including self-test questions with instant feedback, web links, a flashcard glossary, and updates on new developments in EU politics.

www.oup.com/he/kenealy6e

CHAPTER 4

EU Member States

Ramona Coman and Daniel Kenealy

Summary

This chapter starts by emphasizing the diversity of the EU-27. Given their historical trajectories—and their political, social, cultural, and economic traditions—the key questions at the core of the study of the EU have always been: why do member states engage in EU integration? And how? Several theoretical explanations have been developed in an attempt to answer the 'why' question. Section 4.2 contrasts liberal intergovernmentalism (LI) with postfunctionalism—both of which shed light on member states' various visions for Europe, including the development of patterns of differentiated integration. Section 4.3 provides an answer to the 'how' question, focusing on the Council (of ministers), how it votes, the coalition patterns among member states, and the missions of the chair of the presidency, which rotates among the EU member states every six months. Section 4.3 also examines the growing role of the European Council, which, according to new intergovernmentalism, has become the centre of gravity of EU decision-making.

4.1 Introduction

The EU-27 have different historical experiences and trajectories. They are culturally and ethnically varied, with different political structures, economic and social situations, overlapping histories, cultures, and memories (Judt 2005: xiii). Historically, nation states on the European continent have followed different paths to modernity, with varying experiences of capitalist development, industrialization, and urbanization. Some states, such as France, have even been at the centre of revolutions, and have long traditions as nation states. Others—in particular in the east of Europe—have been part of empires and only emerged as independent states in the 20th century. CEE countries, as well as the Baltic States, did not share the experience of Western Europe after World War II, as they were led by communist political parties until the fall of the Berlin Wall in 1989 and the disintegration of the Soviet Union in 1991. While Western member states have long democratic traditions, Southern European and CEE countries—as well as the Baltic States—were under authoritarian or totalitarian regimes for decades.

Member states are also economically diverse. Western and Southern European states have long been market economies; in contrast, the former communist countries from CEE countries and the Baltic States have only fairly recently dismantled the structures of a socialist economy to establish market economies. Not only do member states vary in terms of economic prosperity, they also have different preferences in terms of socio-economic models, all rooted in their history. Some are ardent supporters of liberal market economies, while others prefer coordinated market economies (Hall and Soskice 2001).

Culturally, EU member states have three official scripts: Latin, Greek, and Cyrillic. There are also over 200 minority and regional languages, in addition to the 24 official languages of the EU, all of which have the same legal standing, making the EU the most multilingual polity in the world. In a nutshell, what member states have in common is their diversity.

In terms of population and size, EU member states can be categorized as small or large, rich or poor. According to Eurostat, in 2020, Luxembourg (€266)—followed by Ireland (€211), Denmark (€136), the Netherlands (€133), Austria (€124), Sweden (€123), and Germany (€121)—recorded the highest gross domestic product (GDP) per capita, while Bulgaria (€55), followed by Greece (€64) and Croatia (€64) had the lowest levels, 45 per cent below the EU-27 average (Figure 4.1).[1] In terms of political organization, some are federal states, others are more centralized; some are parliamentary democracies, others presidential or semi-presidential; some are constitutional monarchies, others are republics (Table 4.1). Given their diversity, the question at the core of EU studies is: why and how do member states' governments shape the process of EU integration, by adopting decisions at the EU level, which affect almost 450 million Europeans?

[1] Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=GDP_per_capita,_consumption_per_capita_and_price_level_indices#Overview

Figure 4.1   GDP per capita of the EU-27 (2020)
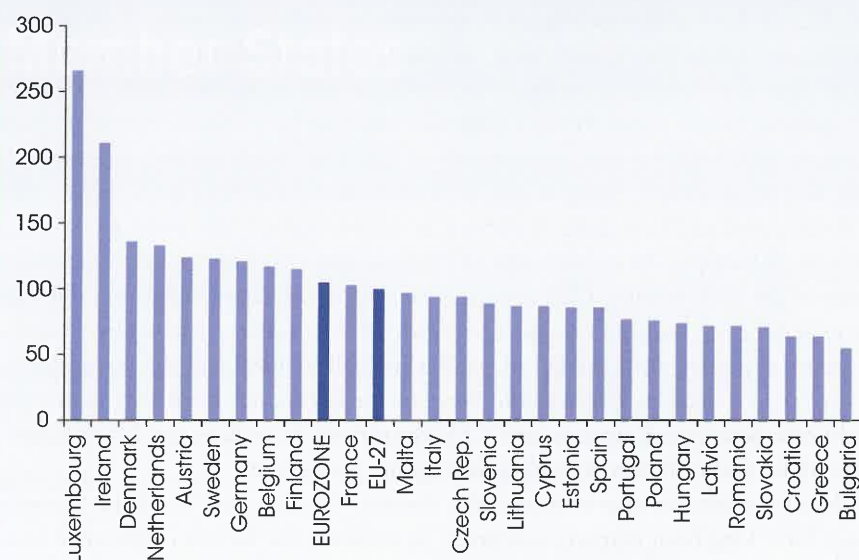
Source: Eurostat, © European Union.

TABLE 4.1   Diversity of member states*

Culturally

5 where a majority speak a Latin based language: FR, IT, PT, ES, RO

8 speak predominantly a Germanic language: AT, BE, DK, DE, IE, LU, NL, SE

8 speak predominantly a Slavic language: BG, HR, CZ, LV, LT, PL, SK, SI

6 speak predominantly a language from another group: CY, EE, FI, EL, HU, MT

7 historically Protestant majority: DK, EE, FI, DE, LV, NL, SE

4 historically Orthodox majority: BG, CY, EL, RO

16 historically Catholic majority: AT, BE, HR, CZ, FR, HN, IE, IT, LT, LU, MT, PL, PT, SK, SI, ES

11 former communist countries: BG, HR, CZ, EE, HU, LV, LT, PL, RO, SK, SI (including 3 former USSR republics EE, LT, LV)

16 'Western': AT, BE, CY, DK, FI, FR, DE, IE, IT, LU, MT, NL, SE (of which 3 were dictatorships until 1970s: EL, PT, ES)

5 had overseas empires in the colonial era until after World War II: BE, FR, NL, PT, ES

3 had overseas possessions prior to World War II: DK, DE, IT

19 had no overseas empire

➤

State structure

6 monarchies: BE, DK, LU, NL, ES, SE

21 republics: AT, BG, HR, CY, CZ, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, MT, PL, PT, RO, SK, SI

3 federal states: DE, AT, BE

2 highly devolved: ES, IT

4 have presidential or semi-presidential systems and their executive president attends European Council: CY, FR, LT, RO

23 have parliamentary systems and their prime minister (or chancellor) attends European Council: AT, BE, BG, HR, CZ, DK, EE, FI, DE, EL, HU, IE, IT, LV, LU, MT, NL, PL, PT, SK, SI, ES, SE

And

3 drive on the left: MT, CY, IRL

*For differences in prosperity and size (population), see Figure 4.1 and Table 4.3.
Initials are the EU's standard two-letter country codes (see Table 4.2).

The concept of a member state is a complex one (see Box 4.1). From a legal perspective, it encapsulates the idea of national governments acting at the EU level in the European Council (through their leaders, i.e. heads of state or government) and in the Council (where ministers represent national interests). From a political and sociological perspective, the concept includes 'all political actors and institutions within a member state' (Bulmer and Lequesne 2020: 3). Member states are key actors in the integration process: they are the 'masters of the treaties' and they shape the future of the EU through the revision of these treaties. National governments are also key players in the day-to-day decision-making process, promoting their interests and preferences in interactions with other member states and EU institutional actors.

This chapter is divided into two main sections. The *why* question at the core of section 4.2 is theoretical in approach, and invites the reader to consider some of the key theories in EU studies such as intergovernmentalism (both liberal and new) and postfunctionalism (see section 1.2). Although different, each theory allows one to understand political dynamics among member states at the EU level and within them, domestically. Both theories seek to explain the positions of member states at the EU level and their visions for Europe. Recall from section 1.2 that there is no single theory of the EU; rather the theories we select depend on the questions we seek to answer. Intergovernmentalism and postfunctionalism—as theories that aim to explain integration, with an emphasis on member state governments, domestic interest groups and/or national publics—are thus especially resonant when exploring the role of EU member states in the integration process.

The *how* question is the focus of section 4.3, which presents real-world interactions between member states in the Council and the European Council, as well as some coalition patterns and cleavages (e.g. large vs. small; rich vs. poor; new vs. old; left vs. right). One of the principal institutional tasks of EU member states is to hold the rotating presidency of the Council for six months. The chapter defines the main roles to be performed in this context, highlighting the centrality of the European Council—and thus the member states—in decision-making in a context of multiple crises, as put forward by the new intergovernmentalism (illustrated in the historical decision of July 2020 allowing the Commission to borrow €750 billion on the capital market to help member states collectively overcome the effects of the COVID-19 pandemic—see section 10.3.1).

BOX 4.1 The concept of a member state

Member states are 'the high contracting parties' who agree to establish among themselves a European Union. As stated by the CJEU in its judgment of 15 July 1964 in the case *Costa v ENEL*, 'by creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity (. . .), the Member States have limited their sovereign rights, albeit within limited fields'. This limitation of sovereignty is enshrined in the treaty revisions, which result, according to LI, from the bargaining among member states, and require their unanimous consent.

The limitations of sovereign rights vary. In some policy areas, member states no longer have the power to legislate at the domestic level. For example, the EU institutions have exclusive competence for competition policy, for external trade policies, or for monetary policy (in the case of Eurozone members). In other areas, such as social regulation, transportation, or economic, social, and territorial cohesion, member states agreed to establish shared competences, meaning that both may act, but any EU legislation has primacy over national legislation. Finally, member states have decided to coordinate their action in policy areas, which are domestically sensitive but need to be discussed collectively to avoid the danger of conducting separate domestic policies (see Table 5.1).

EU membership also creates rights and obligations for citizens, businesses, and other organizations. As the treaty states, 'Member States shall take any appropriate measure (. . .) to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union' and 'shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives' (Article 4 TEU).

4.2 Explaining Member States' Engagement with the EU

Why and how do member states engage with the EU? These are two of the key questions scholars in EU studies have sought to answer since the dawn of European integration. This section illustrates that economic preferences, wealth,

and power matter in understanding member states' engagement with the EU—as LI contends—but that beliefs, identity, and values matter as well, as argued by postfunctionalism.

4.2.1 Liberal intergovernmentalism

Seeking to shed light on the evolution of European integration, Moravcsik (1998) developed the theory of LI. In his book *The Choice for Europe*, Moravcsik argued that states are rational and unitary actors seeking to maximize their interests in a context of economic interdependence. To this end, with each revision of the treaties, member states have agreed to share or to pool national sovereignty to solve domestic or transnational problems. In other words, LI contends that European integration reflects the will of member states (Moravcsik 1998: 3). It is the result of their rational choices and preferences, in response to structural incentives in the global economy (Moravcsik 1998: 3; Alter 1998). Moravcsik conceptualized a model of preference formation in three steps (1998: 24):

- First, member states determine their preferences at the domestic level;
- Second, they bargain them at the supranational level among national governments, and;
- Third, they design supranational institutions—the EP, the Commission, the Court of Justice, the ECB—to secure and implement the outcomes of their collective bargains.

The creation of supranational institutions then facilitates cooperation to secure member states' economic interests. From this perspective, although sovereignty is pooled or shared, states remain the masters of the integration process and retain their sovereignty. As Milward (1984) argued, EU integration did not weaken, but instead strengthened nation states. Yet, this shift from *nation states* to *member states* is not without implications for sovereignty (Bickerton 2012). This legal status is associated with a set of rights, obligations, and guaranties of member states vis-à-vis each other and the EU (see Box 4.1). It also implies a complex process of transformation; that member states need to adapt within the broader process of EU integration, defined by scholars as Europeanization (see Box 4.2).

BOX 4.2 Spotlight on: Europeanization

Scholars have long sought to explain European integration. Since the 1990s, attention has slowly begun to change to focus on EU integration's impact on member states. This broad process of change in the member states themselves (see Ladrech 2010) has been labelled **Europeanization**, understood as a 'process of (a) construction, (b) diffusion and (c) institutionalization of rules, procedures, policy paradigms, shared beliefs and norms which are first defined and

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consolidated at the EU level and then incorporated in the logics of domestic dis-courses, identities, political structures, and public policies' (Radaelli 2000). Put simply, Europeanization explores how the ways in which member states work—both in terms of how they make policy and the policies themselves—are changed by their membership of the EU.

This process of change brought on by EU integration—observed at the level of polity (i.e. institutions), politics (i.e. modes of interest representation), and public policy (see Radaelli 2000)—takes different forms. Some domestic trans-formations result from **top-down Europeanization**, meaning the obligations of member states to implement decisions that they agreed at the supranational level through treaties, regulations, and directives. Others are the outcome of **bottom-up Europeanization**—that, is the 'uploading of national preferences' into EU policy-making (Ladrech 2010: 14). The cause of change can also take the form of **horizontal Europeanization**, driven by member states themselves through diffu-sion of best practices and policy ideas.

While there is a clear correlation between developments at the EU level and changes in member states, the 'cause of change' is more difficult to capture (Exadaktylos and Radaelli 2009). Europeanization is rather a complex, interactive process 'in which domestic polities, politics and public policies are shaped by European integration and in which domestic actors use European integration to shape the domestic arena' (Dyson and Goetz 2003: 20). Top-down and bottom-up dynamics are intertwined. Europeanization is not a uniform process either. It leads to a variety of outcomes, conceptualized by Radaelli (2000) as forms of **absorp-tion or accommodation** (i.e. member states incorporate EU ideas without sub-stantially modifying their domestic politics and/or policies), **transformation** (i.e. member states replace their policies and institutions by substantially different ones defined at the EU level), **inertia** (i.e. lack of change), and **retrenchment** (i.e. do-mestic policies become less Europeanized despite the dynamics of integration).

Recent crises have challenged EU member states in many ways. The decisions adopted in the fast-burning phase of the Eurozone crisis to save the euro have led to increased Europeanization. However, Europeanization is not the only possible outcome. Other developments have led to new phenomena such as disintegra-tion and even 'de-Europeanization' (Coman and Tulmets 2020: 349), that is an in-creased detachment from the EU's core norms, principles, and values.

4.2.2 Postfunctionalism

The liberal intergovernmental account of EU integration shows a European project that has been driven mostly by pro-European political governmental elites bargaining at the EU level to maximize their preferences. Although criticized for its focus on large, 'history-making' decisions (such as the revision of the treaties), LI has long remained one of the most attractive theories for scholars seeking to understand precisely why member states engage in European integration. The 1990s, for example, marked the 'end of the permissive consensus' (Hooghe and Marks 2009), when it became clear that pursu-ing EU integration *for the people* but *without the people* was no longer possible (Schmidt 2006). While there had been widespread approval for European integration among

EU citizens for a long time, as Patel argued, integration, as a process, was not deeply rooted in society. In his words, 'peoples supported the integration project as long as it remained abstract and had little impact on their lives' (Patel 2020: 138).

However, as the process of integration deepened—through the SEA, which repre-sented the first major revision of the treaties in 1986, and the Maastricht Treaty, which took integration more explicitly into areas of core state powers such as money, se-curity, and foreign affairs—it began to encounter stronger opposition from both member state governments and their citizens. Not only did member states' govern-ments bargain hard to prevent the European project going beyond what they felt was needed to realize their economic interests, for the first time, governments them-selves faced mounting popular dissent and contestation. The Danes for example, rejected the Maastricht Treaty in a referendum on 2 June 1992 (with 50.7 per cent of the 83 per cent record turnout voting against it). In May 1993, after obtaining some opt-outs in key policy areas such as the EMU and Justice and Home Affairs (JHA), 56.7 per cent of Danes voted in favour. In France, the Maastricht Treaty was also submitted to referendum; it obtained a little 'oui' (50.8 per cent) in September 1992. In Germany too, where citizens have historically been supportive of European integration, there has been increasing reluctance since the euro replaced the deutsch-mark, a former symbol of economic power and sovereignty (Beichelt 2013: 88). The Maastricht Treaty was only the beginning of an era of increased contestation.

In 2005, citizens rejected the Constitutional Treaty in France and in the Netherlands. While French citizens were opposed to further liberalization, in the Netherlands, voters were opposed to new waves of enlargement and the accession of Turkey. Later, the Lisbon Treaty was rejected by Ireland in June 2008 by 53.6 per cent of the 50 per cent of Irish voters who turned out. Observers have argued that the vote did not express a rejection of the idea of Europe, but rather the refusal of a treaty that was difficult to understand and had been drafted by European elites disconnected from citizens, as reported by *The Guardian* (13 December 2008—see Quinlan 2012). The Lisbon Treaty was finally approved in October 2009, after some adaptations made it acceptable to member states.

While support for European integration was decreasing in some areas in the West, it remained relatively high (at least initially) in Southern Europe and in CEE countries. But even in CEE, where prior to accession support was above 75 per cent, it has con-siderably decreased over time. There are several reasons for this. Joining the EU was only possible after completing a series of difficult, even painful economic and social reforms (see Box 9.2). Some have enjoyed the advantages of EU integration, but many others have felt like 'second-class citizens'. The accession negotiations also caused dis-satisfaction and led to the emergence of eurosceptic parties. In 2001, the highest level of support for integration was in Romania (83 per cent) followed by Bulgaria (80 per cent), both of whom were still candidate countries, while in Estonia, three years before accession, support had decreased to 38 per cent from the 79 per cent reported in 1993. The same downward trends were observed in Poland (from 80 per cent in 1993 to 54 per cent in 2001) and in the Czech Republic (from 84 per cent to 54 per cent).

Attitudes towards the EU among its citizens can fluctuate, often in relatively short spans of time (see Table 4.2). Debomy (2016) identified five periods since 1985, a

TABLE 4.2   Attitudes towards the EU in the member states

	1999	2009	2012*	2019
Ireland (IE)	78	69	58	81
Luxembourg (LU)	77	79	81	81
Netherlands (NL)	73	72	72	79
Denmark (DK)	51	65	66	77
Germany (DE)	44	61	69	76
Portugal (PT)	59	50	36	72
Sweden (SE)	34	54	61	72
Estonia (EE)	—	59	52	70
Finland (FI)	45	52	50	69
Spain (ES)	55	71	53	67
Belgium (BE)	47	66	67	67
Hungary (HU)	—	32	30	66
Lithuania (LT)	—	57	51	64
Poland (PL)	—	60	50	63
Latvia (LV)	—	25	32	59
EU Average	49	57	50	59
France (FR)	47	50	57	58
Malta (MT)	—	57	51	56
Slovenia (SI)	—	48	43	56
Romania (RO)	—	66	62	55
Bulgaria (BG)	—	51	58	53
Cyprus (CY)	—	47	35	53
Austria (AT)	36	41	32	49
Greece (EL)	54	45	46	47
Croatia (HR)	—	—	—	46
Slovakia (SK)	—	66	43	46
UK (UK)	31	28	34	42
Czech Rep. (CZ)	—	42	24	37
Italy (IT)	62	48	40	37

Notes:
Question: 'Generally speaking, do you think that [name of country]'s membership of the EU is a . . . Good thing / Bad thing / Neither good nor bad / Don't know'.
*2012 is included as a data point at the height of the Eurozone crisis.
Source: © European Union, Eurobarometer 51 (1999), 71.3 (2009), 77.4 (2012), 92.2 (2019), accessed through the Gesis database.

period of 'Eurofavour'—occurring alongside renewed efforts to complete the single market—was replaced by a period of declining support beginning in 1991 (when 71 per cent of EU citizens reported that their country's membership of the EU was 'a good thing') and running to 1997 (when the same metric reported just 46 per cent). This period coincided with the political difficulties surrounding the Maastricht Treaty and the EU's inability to respond coherently to conflict in the Balkans. The period 1997–2007 was one of 'ups and downs' although—by the end of that period—58 per cent of EU citizens evaluated their country's membership as a 'good thing' (lower than the peak recorded in 1991 but a marked improvement on 1997). The period 2007–12 was once again characterized by declining support (hitting a low of 47 per cent in May 2011) in the context of the global financial and Eurozone crises. This was followed by a steady climb, with the 'membership is a good thing' measure hovering around 60 per cent from 2018–20 (see European Parliament 2019a: 11). The most recent (at the time of writing) measure was 65 per cent, recorded in summer 2020 (Eurobarometer 94.2).

The EU-wide average figure masks national differences, of course (Table 4.2). Some swings in national opinion can be correlated with significant political events. For example, declining support in Greece, and declining (then rising) support in Ireland, Portugal, and Spain can be largely attributed to the Eurozone crisis and the impact of subsequent EU policy decisions on those countries. Public attitudes in Italy have been trending consistently—and sharply—downwards for several decades. Interestingly, there are countries where eurosceptic parties are electorally successful, form governments, and bring such agendas to the European Council and Council (of ministers) and yet their populations broadly see EU membership as 'good'—for example, Hungary and Poland (see section 6.4). This is a reminder that the interaction between public attitudes, on the one hand, and political leaders and parties, on the other, is complex and that eurosceptic sentiment among the people often has to be activated and mobilized by political leaders. Similarly, populations that are broadly supportive of EU membership can elect governments that challenge the EU's values and seek to halt further integration.

The post-Maastricht era—and the end of the 'permissive consensus'—pushed scholars to reconsider the theoretical lenses through which they analysed EU integration. As Hooghe and Marks (2009: 5) have argued, in the current state of EU integration 'national leaders must look over their shoulder when negotiating European issues'. Against this backdrop, postfunctionalism—a new theory of EU integration that emerged in 2008—contends that domestic politics constrain governments and their preferences. It cannot now be taken for granted that elites are still able to shape European integration in complete isolation from domestic politics (Rauh 2021); political actors need to consider a wider context of increased politicization, the polarization of views, and rising euroscepticism (see Box 4.3).

BOX 4.3   Spotlight on: Euroscepticism—what's in a label?

Scholars proposed several typologies to shed light on the attitudes towards the EU of citizens, political parties, and member states' governments. Taggart (1998: 366) was among the first to define euroscepticism as 'the idea of contingent or qualified opposition' to the process of European integration (1998: 366), distinguishing between hard—a 'principled opposition to the EU and the European integration'—and soft forms of euroscepticism—no principled objection to membership, but rather a defence of national interests and values. Following David Easton's initial distinction between diffuse and specific support for integration, other typologies have been proposed that distinguish between 'diffuse support' (based on ideology and values), and 'specific support' (based on rational cost-benefit calculations and utilitarian arguments) (Kopecký and Mudde 2002). On the diffuse support dimension, Kopecký and Mudde (2002) distinguish between *europhiles* (who believe in the key ideas of European integration, supranational institutions, and a liberal market economy), and *europhobes* (who do not support the general idea of EU integration). Regarding the specific support dimension, there are *EU optimists* (who believe in the EU as it is and as it is developing) and *EU pessimists* (who do not support the EU as it is and are pessimistic about the direction of its development) (Kopecký and Mudde, 2002). (On the drivers of euroscepticism, see Box 6.6.)

Contrary to LI, which emphasizes economic interests, postfunctionalism 'conceives European integration as a conflictual process arising from incompatible belief systems' (Hooghe and Marks 2019: 1117). Issues related to values and identity not only determine attitudes towards EU integration, they are also at the core of the bargaining of treaties themselves, with religion remaining at the centre of many important political debates in the EU (Foret 2015). In the early 2000s, for example, during the drafting of the Constitutional Treaty for Europe, several social and political actors argued in favour of including a reference to Europe's Christian heritage as well as one to God. The governments of Italy, Spain, Poland, Slovakia, Malta, Austria, the Netherlands, Portugal, and Ireland were in favour of these references to Christianity (*EUObserver* 2003), while the French government was fiercely opposed to any religious interference in the Constitutional Treaty. The Treaty of Lisbon does not contain any such provisions.

4.2.3 Visions for EU integration

Whether rooted in political economy (LI) or in belief systems (postfunctionalism), preferences determine visions for Europe. From its inception to today's Union, some have envisioned the creation of a European federation, while others have sought a more intergovernmental union, a Europe of states. While federalists are in favour of the development of a political project beyond the state, proponents of intergovernmental cooperation prefer a confederation of sovereign states. In some sense,
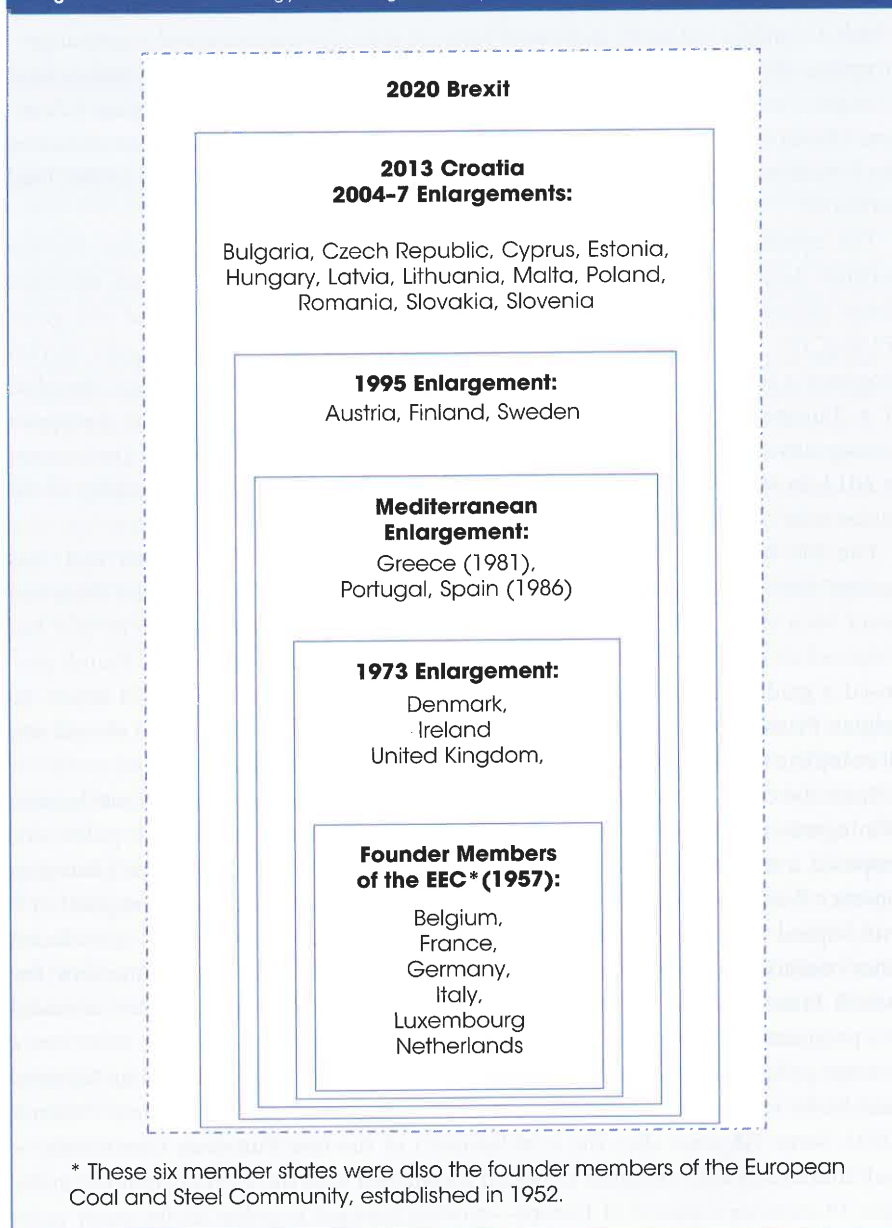
it is easier to discuss what the EU is *not* rather than what it is. The EU shares some of the characteristics of a federation—defined as an institutional arrangement in which '(a) public authority is divided between state governments and a central government, (b) each level of government has some issues on which it makes final decisions, and (c) a high federal court adjudicates disputes concerning federalism' (Kelemen 2003: 185). However, the EU's own member states have remained the formal source and signatories of European treaties, standing thus as the final authority.

The opposition between these two visions for Europe still dominates current debates. As the Prime Minister of the Netherlands, Mark Rutte declared, the 'ever closer union' principle behind the EU's integration process is 'buried and gone' (EURACTIV 2017). While, in the midst of the Eurozone crisis, Angela Merkel proposed a federalist leap to create a political union (*EURACTIV* 2012), the ideal of a 'Europe of nations' was proclaimed by several members of the European Conservative and Reformists political group in the EP, in their Prague Declaration in 2013, in which they insisted on the importance of 'the sovereign integrity of the nation state'.

The EU has always oscillated between 'more Europe' (federation) and 'less Europe' (cooperation). Moving forward together at the same speed has therefore never been easy, particularly as the political endpoint of the European project has remained an open question. In the 1970s, the German Chancellor Willy Brandt proposed a graduation in integration, including monetary issues; the 1975 report by Belgian Prime Minister Leo Tindemans highlighted that member states should not all complete the integration steps simultaneously (Patel 2020: 45).

Since the early 1990s, *flexibility* has been invoked more often as a new mechanism of integration itself. In 1994, for example, German Christian Democratic politicians proposed a model of deeper integration called *Kerneuropa* ('core Europe') bringing together France, Germany, and the Benelux countries. However, the proposal of a 'multi-speed Europe', or 'variable geometry', was not well received, as it excluded other countries—in particular Italy, a founding member state. In the same vein, the French Prime Minister Balladur proposed 'a Europe of concentric circles', a model of a polycentric EU in which some member states would be part of the inner circle in some policy areas and part of other circles in others. In the UK, Prime Minister John Major was also in favour of this 'pick and choose' or 'Europe *à la carte*' (Wiener 2003). Some 70 years after the establishment of the first European Community— itself founded as a six-member vanguard dissatisfied with the level of ambition in the then 14-member Council of Europe—moving forward together is obviously more challenging in an EU of 27 than in one with only six member states (Figure 4.2).

In part to accommodate the diversity of visions and preferences, the Treaty of Amsterdam institutionalized the possibility of enhanced cooperation, allowing a group of states to move ahead in the integration process, leaving it open for others to join at a later stage (see Box 5.6). However, differentiated integration was already a key feature of the EU before the Treaty of Amsterdam (see Schimmelfennig and Winzen 2019). It can be contrasted with the idea that all EU

Figure 4.2   Chronology of enlargement (and contraction)

2020 Brexit

2013 Croatia
2004–7 Enlargements:

Bulgaria, Czech Republic, Cyprus, Estonia,
Hungary, Latvia, Lithuania, Malta, Poland,
Romania, Slovakia, Slovenia

1995 Enlargement:
Austria, Finland, Sweden

Mediterranean Enlargement:
Greece (1981),
Portugal, Spain (1986)

1973 Enlargement:
Denmark,
Ireland
United Kingdom,

Founder Members of the EEC*(1957):
Belgium,
France,
Germany,
Italy,
Luxembourg
Netherlands

* These six member states were also the founder members of the European
Coal and Steel Community, established in 1952.

member states—and no outsiders—proceed with integration in a uniform way, in the same policy areas and at the same time. The Schengen area and the Eurozone are key illustrations of differentiated integration—the Eurozone contains 19 EU member states, while the Schengen area contains 22 EU member states alongside four non-EU member states.

It is the very aspects of member state diversity highlighted in this chapter that makes differentiation an increasingly talked about model of integration. It is difficult to secure unanimity among 27 states that vary so much in terms of their size, wealth, and economic structure (as liberal and new intergovernmentalists emphasize), and underlying preferences about political integration and the strength of national identity vs. European identity (as postfunctionalists emphasize)—not to mention the vagaries of political ideology that can colour member state governments in different ways at different points in time. Differences in *both* wealth/economic power *and* identity have been found to drive national preferences for differentiation (Winzen 2016; Winzen and Schimmelfennig 2016).

The size of the group of member states pursuing differentiation is important, with bigger groups generally having more negotiating clout. So is the extent to which the proposed differentiation will create difficulties—political or policy-based—for states that do not participate (the fewer the difficulties, the more likely non-participating states will allow it). Member states that seek to further the process of European integration can find themselves struggling to secure the support of those more eurosceptic states, especially in a situation where unanimity is required to start a new differentiated project. In such situations, the member states who wish to move ahead can either grant formal opt-outs to the reluctant ones (e.g. the opt-outs granted on EMU to Denmark and the UK in the Maastricht Treaty), or they can agree separate treaties outside of the EU framework, thus sidelining the reluctant states (e.g. the original Schengen agreement and, more recently, the Fiscal Compact on economic governance—see section 7.5). Differentiation is also constrained by the formal institutional rules of the EU, which involve majority, sometimes unanimous, voting, and by the culture of European integration, which is one of uniformity by default, not differentiation.

The UK's withdrawal from the EU ('Brexit'—see section 10.2) has raised new questions and avenues for research about the relationship of third-party countries to the EU's institutions and policies, and the potential for new developments in differentiated integration and even *dis*-integration (see Gänzle et al. 2020).

4.3 Decision-making: How Do Member States Shape Integration?

The ways in which member states shape decisions at EU level vary according to methods of decision-taking. The *supranational method* (notably the OLP—see Figure 5.1) is the decision-making procedure through which the EU produces legally binding decisions (regulations, directives, or decisions). Decisions are formally adopted by QMV in the Council in 80 per cent of cases (see Box 3.3). In practice, however, 90 per cent of decisions are adopted by consensus, meaning that formal voting is avoided. However, as Novak (2013) showed, consensus often conceals strong tensions. Tangible political disagreements can be hidden by the so-called consensus, as member states' representatives in the Council, for various

reasons, choose not to record their dissent officially by abstaining or formally voting against the proposal (Mattila 2008: 27).

The *intergovernmental method* gives a prominent role to member states both in the process of policy initiation (often called 'agenda-setting') and the adoption of a decision. Intergovernmental decision-making prevails in policy areas that represent 'core state powers' (Genschel and Jachtenfuchs 2018) such as foreign policy, and economic, fiscal, financial, and budgetary policies. It also applies to the revision of treaties, the sanctioning of a serious and persistent breach of the EU's values (Article 7 TEU), enhanced cooperation, or the enlargement/withdrawal procedures. Thus, unanimity is still maintained in a series of very sensitive policy areas such as social security and social protection, EU membership, or citizenship. However, while the decision-taking is intergovernmental, the policy output can be supranational in that common binding legislation is enforced through the EU legal system and the CJEU.

The third mode of decision-making—*policy coordination*—is best illustrated by the European Semester, designed in 2011/12 in the fast-burning phase of the Eurozone crisis as a cycle of economic, fiscal, and budgetary policy coordination. Its aim is to create a scheduled framework allowing member states to align their policies with the objectives and rules agreed upon at the EU level. In this way, member states coordinate their structural reforms with their fiscal and budgetary policies (which have traditionally remained in the hands of national governments), in order to ensure the sustainability of public finances in line with the Stability and Growth Pact (SGP), and the prevention of excessive macro-economic imbalances. While the Commission plays a central role in overseeing this process, its recommendations to member states are ultimately approved by the Council and endorsed by the European Council.

4.3.1 Coalitions and cleavages of member states

Coalitions among member states are not fixed. In both the Council (of ministers) and in the European Council, they shift from issue to issue, depending on the size of the country, geographical position, ideological preference, or length of membership.

Historically, Germany and France have shaped much of the integration process (the Franco-German relationship—see Box 4.4). For many years, the power of the two largest member states, France and Germany, rested on a 'fine balance' between the political prestige of France after World War II and the growing economic power of West Germany since the 1970s (Cole 2001: 13). In recent years however, in particular in the context of the Eurozone crisis, many have seen a hegemonic role for Germany and an asymmetry of power between Germany and France (Schild 2020: 1072). In fact, the Franco-German relationship is important for another reason: they often start with divergent views on different subjects: for example, France tends to be more protectionist, less aligned with the US, and more intergovernmental in its vision of the EU, while Germany tends to be more in favour of free trade, more aligned with the US, and more federal in its vision for the EU. Frequently, when one

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BOX 4.4   Spotlight on: The Franco-German relationship

The **Franco-German duo** has been at the heart of the integration process. As stated in 1963 by Konrad Adenauer when signing the Franco-German Treaty of Friendship (the Elysée Treaty): 'there would be no Europe if this genuine reconciliation between France and Germany had not occurred'. The treaty, signed by the French President Charles de Gaulle and German Chancellor Konrad Adenauer, called for closer cooperation between the two countries. Because of their size, economic power, and their historical political rapprochement after World War II, France and West Germany became the key drivers of the integration process. In 1978, Chancellor Helmut Schmidt and President Valéry Giscard d'Estaing established a plan for a European monetary fund to maintain monetary stability. President François Mitterrand and Chancellor Helmut Kohl both supported the adoption of the Maastricht Treaty, which marked a new step in the integration process.

In recent years, however, the relationship between German Chancellor Angela Merkel (2005–21) and successive French presidents—Nicolas Sarkozy (2007–12), François Hollande (2012–17), and Emmanuel Macron (2017–)—has been marked both by moments of intense cooperation and by profound dissensus. Angela Merkel and Nicolas Sarkozy stood together in the Eurozone crisis, supporting the creation of the European Financial Stability Facility and the Competitiveness Pact (Rozenberg 2013: 61; Crespy and Schmidt 2014). The dominant position of France and Germany in the management of the crisis was labelled the 'Merkozy duumvirate' (Schoeller 2018: 1), as meetings between the French president and the German chancellor preceded most of the important EU summits (Coman 2018: 8). However, their efforts did not hide the divergences between France and Germany as far as the solutions to save the euro were concerned (Bulmer 2014: 1259). While Sarkozy appeared as a 'white knight riding to the rescue of Greece', Merkel was seen as the new 'Iron Lady' (Schmidt 2020: 127), insisting on strict rules and compliance to secure the stability of the Eurozone. When Germany promoted the strengthening of the SGP and structural reforms, France joined Southern European countries that were being painfully impacted by these reforms. In recent years, the divergent positions of France and Germany have been publicly voiced more often (Rozenberg 2013: 61), although on existential issues, such as the COVID-19 pandemic recovery fund, Merkel and Macron acted together to convince EU leaders to support an ambitious EU response to an unprecedented global health crisis (see section 10.3.1).

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of the pair has had a centre-left government, the other has had a centre-right one. Yet they both typically remain committed to finding workable compromises—and such compromises are usually a good starting point for the rest of the EU.

Besides economic and political power, size (in terms of population) matters—it determines representation in EU institutions, for example the number of members of the EP or the weight in the Council to reach QMV (Table 4.3). After the EU's 2004–7 enlargements (taking in ten CEE states plus Cyprus and Malta), the number

TABLE 4.3   Clusters of member states by population size (2020)

Large	Medium	Small	Very small
Germany (83)	Romania (19.4)	Denmark (5.8)	Cyprus (0.9)
France (67)	Netherlands (17.3)	Finland (5.5)	Luxembourg (0.6)
Italy (60.4)	Greece (11.7)	Slovakia (5.5)	Malta (0.5)
Spain (47.9)	Belgium (11.5)	Ireland (4.9)	
Poland (37.9)	Czech Rep. (10.6)	Croatia (4.1)	
	Portugal (10.3)	Lithuania (2.7)	
	Sweden (10.2)	Slovenia (2.1)	
	Hungary (9.7)	Latvia (1.9)	
	Austria (8.9)	Estonia (1.3)	
	Bulgaria (7)		

Note: Figures in brackets are approximate populations in millions.
Source: Eurostat, © European Union.

of small states increased, bringing challenges: on the one hand, small member states feared that the most populated ones would dominate the decision-making process; on the other, the larger member states were concerned that their power would be reduced. The size of the country, however, does not automatically determine the patterns of coalitions in either the Council or the European Council, with the exception of issues related to institutional or quasi-constitutional matters discussed during the revision of the treaties. The size of the Commission is one example. The Treaty of Lisbon stipulated that the number of commissioners should represent two-thirds of member states, unless the European Council decided otherwise (which it subsequently did—see section 3.2.2). Small member states (but not only them) have always been keen to be represented equally in the college, although commissioners do not represent national interests. Because of potential divisions, the European Council in 2009 decided that the number of commissioners would remain equivalent to the number of member states, a decision that satisfied small member states, as well as others.

Some coalitions are based on geographical lines. Certain member states tend to vote together. Often, countries that are in close geographic proximity share similar interests and objectives, such as the Mediterranean states that initiated the Euro–Med Barcelona Process in 1995—a result of the Spanish rotating presidency of the Council. The Barcelona Process involved EU member states trying to establish more coherent relations with states close to the EU's external borders, in North Africa and the Middle East—a process that eventually saw the establishment of the 'Union for the Mediterranean'. Another example is the Danube Strategy, which was promoted by all the countries this river runs through and is an example of macro-regional

cooperation within the EU. Such strategies—and the networks and partnerships that underpin them—are a reminder that the EU is evolving as a complex system of multi-level governance (see Sielker 2016; Gänzle 2017).

Northern member states are more likely to vote together than with Southern member states and vice versa (Mattila 2008). Finland and Italy are therefore often in opposite coalitions, while Italy and Greece tend to vote alike. In 74 per cent of cases, when Denmark decided to vote 'no' or to abstain from voting, Sweden also challenged the same proposal (Mattila 2008: 32). Similarly, when Sweden contested a proposal, Denmark followed suit. Portugal is often a coalition-builder among the Southern member states, in particular with Italy and Spain. Greece often joins forces with both Italy and Portugal (Mattila 2008). The Benelux countries (see Box 4.7) also tend to vote similarly, and are more economically integrated among themselves than with other member states.

While there are geographical patterns, geography *alone* leaves much to be explained. What brings these member states together is rather a shared political culture and similar preferences and interests. Depending on the issue at stake, *right/left-wing political cleavages* explain more than geography alone. The left/right cleavage plays a key role in debates about the market. While some countries are more protectionist, others are more prone to liberalization. It has been argued that the UK's accession in the 1970s greatly shaped the liberalization trend in EU integration, despite the reluctance of France and Southern member states. This trend was strengthened by the Eastern enlargement, as several new member states such as the Czech Republic, Poland, and Slovakia—under centre-right governments—became strong supporters of economic liberalization (Copsey and Haughton 2009; Lequesne 2014: 269). As a promoter of free trade within the EU, Sweden has positioned itself several times against protectionism and subsidies that are often supported by France, Southern European, and CEE member states. At the same time, Sweden shares with other Nordic countries (see Box 4.7) a belief in a comprehensive welfare system and sustainable development (Michalski 2013: 182).

While national elections can change the policy stances of member states, national models of capitalism and economy often transcend oscillations between centre-left and centre-right governments (see Johnston and Regan 2018). Those structures are important in shaping how member states approach European integration, and asymmetries of power between groups of member states with different types of economy are crucial in determining many EU policies. For example, Germany, along with several smaller Northwestern member states, has an export-led-growth model grounded in a strong manufacturing base. Ireland and the Visegrad countries (see Box 4.7) also have export-driven economies, albeit they rely more on foreign direct investment than home-grown firms (Bohle 2018). Other member states, however, possess economic models oriented towards domestic consumption and non-tradable services. When member states with fundamentally different types of capitalist economies make policy *collectively*, questions arise as to which 'type' of economy—and therefore which group of states—is being privileged in that process. Many of the policies developed in response to the Eurozone crisis, for example,

were grounded in economic ideas more aligned with the German model, which caused economic pain in other states and raised questions about democracy and legitimacy in the EU (Kriesi 2018).

The accession of 13 member states since 2004 at first only slightly altered coalition patterns in the Council, as the 'not so new anymore' member states rarely vote *en bloc* (Zaun 2020: 1), but rather join existing coalitions. In recent years, however, Eastern European member states in general and the Visegrad group (V4) in particular (see Box 4.7) have become more assertive in blocking decisions in sensitive policy areas (see Box 4.5). This also shows how important belief systems are (as emphasized by postfunctionalists) in understanding member states' positions in EU decision-making, in particular on issues related to migration.

BOX 4.5   How it really works: New vs. old and the East-West divide

Since 2011, the arrival of refugees in Italy and Greece has placed a strain on European solidarity. In April 2014, on the eve of the European elections, during his campaign for the presidency of the European Commission, Jean-Claude Juncker presented an immigration plan aimed at creating the conditions to strengthen solidarity between states within the framework of the EU's migration policy. After his election, Juncker called for 'the establishment of a quota system', a proposal that was then presented to the European Council later the same year. Juncker insisted on the responsibility of Europe 'as the richest continent on the planet', which 'must ensure that people who, driven by necessity, pile up in ships to reach our shores no longer drown before them'. At the heart of this project was a relocation mechanism that would assist Italy and Greece. The Commission stressed that 40,000 Syrian and Eritrean nationals should be relocated to other member states in the next few years on the basis of a distribution key, which would itself be based on objective criteria such as the size of the country and its population, GDP, and unemployment rate. According to the United Nations High Commission for Refugees (UNHCR), in 2014, the total number of refugees numbered 13 million, the highest number since 1999. The EU had welcomed one million, representing 7.6 per cent of the world's total and around 0.2 per cent of the EU population.

The JHA Council adopted a decision to relocate 120,000 refugees on 22 September 2015 (EU Decision 2015/1601 of the Council) with 23 member states voting in favour, four against (Czech Republic, Romania, Hungary, and Slovakia), and one abstention (Finland). Three members of the V4 (which brings together Poland, Hungary, the Czech Republic, and Slovakia) opposed the decision. The V4 remain fiercely opposed to the Commission's updated migration plan presented by Ursula von der Leyen (*EURACTIV* 2021a).

4.3.2 The rotating presidency of the Council (of ministers)

Each member state holds the presidency of the Council for six months. In 2016, this order was established until 2030. For six months, the presidency contributes to the decision-making process in various roles, including acting as organizer, broker,

and even leader (Schout and Vanhoonacker 2006; Quaglia and Moxon-Browne 2006: 349). Since Lisbon, groups of three successive presidencies—called the trio (Dagnis-Jensen and Nedergaard 2014)—together determine the priorities of the Council on a rolling 18-month basis.

For six months, the presidency acts as an agenda-setter, putting forward a set of priorities for its mandate. The role of the presidency is sometimes overestimated (see section 3.3.1). Presidencies have no powers in their own right—they must secure the necessary support in the Council. Six months is a short period of time, when considering that the political agenda is often challenged by unexpected events and crises (e.g. Eurozone crisis, the COVID-19 pandemic). In addition, each presidency inherits the legislative dossiers of the previous one, as these take months, or years, to be adopted through the OLP. Priorities matter. Policy priorities give an indication as to the policies on which the country holding the Council presidency will seek to reach agreements with other member states and EU institutions. For example, the main aim of the German presidency at the end of 2020 was to see the (already scheduled) Multiannual Financial Framework and the (new idea for the) Next Generation EU budget agreed by the 27 member states, in order to overcome the consequences of the COVID-19 pandemic without delay. Portugal took over in January 2021 with the aim to deliver 'a fair, green, and digital recovery' (the motto of their presidency). The priorities of each presidency also reflect a combination of national, regional, and European interests. For example, CEE countries have put forward the importance of cohesion, enlargement, or the European Neighbourhood Policy. France has historically sought to preserve an ambitious CAP, while Nordic member states have promoted a greener European policy.

Each presidency is prepared at least two years in advance at the domestic and European level. It can be thought of as a two-level game (Coman 2020). Depending on the national traditions of consultations and modes of preference formation, each member state discusses its priorities upstream with national and European actors (in particular the members of the trio). France, for instance, holds the rotating presidency in the first half of 2022. After his 2017 election, President Macron, in a speech at the Sorbonne, announced his ambitions for the EU, calling for a refoundation, 'a sovereign Europe, democratic, and united'. This was not only addressed to French voters. It was a wider message to EU citizens, recalling the Schuman Declaration and announcing a return to a time when France was—and could be again—a force of proposition. In March 2021, Macron's State Secretary for EU affairs, Clément Beaune, announced that preparations had started, with specific ambitions to strengthen the EU's sovereignty – also referred to as open strategic autonomy – vis-à-vis third-party countries, against the backdrop of tensions with China, Russia, and even with the US. The narrative put forward by the French president was that the global health crisis had revealed the member states' vulnerability and dependence vis-à-vis non-EU countries. In his view, an ambitious programme was required, tackling crucial issues such as digital sovereignty, food safety, and defence. France's ambition in this respect is two-fold: to strengthen the EU's *external* capacity to act, and boost overall European identity *within* the EU. While the ideas

announced several years before the beginning of the presidency are ambitious, their means of implementation remain to be determined.

Besides ideals, each presidency has a role to play as an organizer. This means that for six months, the rotating presidency determines, among others, the meetings allowing the adoption/conclusion of ongoing legislative files. It also organizes and chairs all the meetings of the Council formations (with the exception of the Foreign Affairs Council, chaired by the high representative—see section 3.4). To this end, each EU member state devotes considerable human resources to the preparation of its presidency. For example, from January to June 2019, the Romanian presidency organized about 2,500 meetings and events, including more than 2,000 meetings of working groups, 64 Council ministerial meetings, 190 trilogues—three-way meetings between representatives of the Commission, Council, and EP (see Box 5.4)—91 meetings of Coreper I and II, plus a total of 300 events organized in Romania, as well as the Sibiu Summit on the 9 May 2019, which was an informal European Council focused on developing strategic plans for the future (Coman 2020—see Box 4.6).

BOX 4.6 How it really works: The 2019 Romanian presidency?

What makes a rotating presidency successful?[2] Scholars have argued that a presidency is effective if it manages to advance negotiation dossiers, to mediate preferences between national and European institutions, and to reach agreements on a number of important files (Benes and Karlas 2010: 69; Vilpisauskas 2014: 99).

As discussed elsewhere (Coman 2020), the first Romanian rotating presidency of the Council took place in the first half of 2019. Prior to 2019, observers at the EU and national levels feared that the Romanian Social Democratic government would be unable to successfully perform its missions. Domestic factors—such as euroscepticism, corruption, and attempts to limit the independence of the judiciary—cast a shadow on its already weak credibility. However, the Romanian rotating presidency managed to successfully fulfil its role. In 100 days, they managed to reach compromises and conclude 80 legislative acts. How?

Part of the success of a presidency relies on the work previously done by other presidencies and the support provided by the Secretariat General of the Council, in addition to the roles of civil servants and diplomats in both Brussels and the national capital. In this case, most of the work was accomplished by the Romanian Permanent Representation (PermRep) in Brussels, led by Ambassador Luminita Odobescu, who—at the end of the presidency—declared that 'the real driving force (. . .) was the strong determination coming from Romanian officials and experts to deliver' (Romanian EU Council Presidency, 7 October 2019).

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[2] This section is based on analysis of the first Romanian rotating presidency of the Council (see Coman 2020).

The rotating presidency should also allow the holder to act as a mediator, in which it plays a key role in facilitating agreements. Effective leadership increases the chances of identifying efficient bargaining outcomes in the Council and drawing negotiations to a close quickly (Warntjen 2013: 1244).

4.3.3 The increasing role of the European Council in EU decision-making

The post-Maastricht era has brought not only increased contestation, as illustrated by postfunctionalism. Other trends have been observed at the institutional level, for example, in the interactions between and within institutions. Contrary to LI, which explains why member states share or pool sovereignty, the theory of new intergovernmentalism argues that member states have become extremely reluctant to allow any further delegation of power from the domestic to the supranational level (Puetter 2014). Integration is pursued, but 'without supranationalization' (Bickerton et al. 2015b). In addition—and again contrary to LI, which focuses on bargains among member states to shape integration—new intergovernmentalists argue that consensus-seeking and deliberation have become the norm in day-to-day decision-making (Hodson 2021: 86). Recent crises—from the Eurozone crisis to the migration crisis—have shown that most solutions have emerged through intergovernmental deliberations in the Council and in the European Council (Puetter 2014), which is different from bargaining in the sense that the leaders seek to accommodate their differences through argumentation (Schmidt 2020).

For example, in the context of the Eurozone crisis, the search for solutions to save the euro was marked by tensions between Southern and Northern European member states. While Germany, supported by Northern member states, argued in favour of austerity and structural reforms (Bull 2018), France and Southern European member states argued in favour of increased economic and budgetary flexibility (Coman 2018). Demands for austerity thus characterized the initial, fast-burning phase of the crisis, after which more flexibility was permitted once it became clear that austerity was not succeeding in creating its intended economic policy outcomes. The shift from the former to the latter strategy was the result of increased deliberation. Deliberation is understood as member states' attempts to accommodate national differences in the European Council and in the Council, as well as in the wide range of working groups in which national policies are coordinated since the Eurozone crisis.

Because of the increased heterogeneity of national preferences—resulting from their different economic interests or preferences based on identity—member states resort more often to the European Council. Decisions are taken by the leaders in the European Council rather than by the ministers in the Council. The more prominent role of the European Council has an impact on its relations with other EU institutions. As new intergovernmentalism puts it, in the decade of crises, the European Council has become the centre of gravity of EU decision-making,

instructing both the European Commission and the Council (Bickerton et al. 2015b). As a result—and as new intergovernmentalism highlights—the European Council takes decisions that would traditionally fall within the ambit of the Council (of ministers) (Puetter 2014; Fabbrini 2015). As a reminder, the European Council started to meet informally in the late 1960s, with the aim of giving greater impetus to EU integration and of intervening when divisions were preventing the members of the Council from reaching agreements (see section 3.5). The European Council is therefore the forum where 'history-making' decisions are made. Since the beginning of the Eurozone crisis, the number of European Council meetings has increased. Some of them deal with key sensitive issues (often called 'high politics'). However, many 'low politics' issues have now become high politics concerns, due to the increased heterogeneity among member states.

A decade of EU crises has also made more visible this new role of the European Council, a role that has been further strengthened by the crises triggered by the COVID-19 pandemic. While the Eurozone crisis has dramatically impacted the peoples of Europe, the COVID-19 pandemic has put all individual national economies under considerably more strain. In 2020, at the beginning of the health crisis, when lockdowns were declared, borders were closed, and much economic activity was brought to a standstill, it clearly appeared that the recovery would depend on the capacity of each member state to deal with its social and economic consequences. After years of both austerity and structural reforms to douse the flames of the Eurozone crisis, it appeared that not all member states were able to increase their levels of debt to overcome the economic effects of the pandemic.

The EU's initial reaction was slow, in particular when affected countries needed a helping hand. In search of a solution, various manifestos, declarations, and petitions were published all over Europe, demanding an ambitious response such as the mutualization of debt. On 25 March 2020, nine Eurozone countries (Belgium, France, Italy, Luxembourg, Spain, Portugal, Greece, Slovenia, and Ireland) sent a letter to the President of the European Council, Charles Michel, asking for a common debt instrument (often referred to as 'Corona-bonds') to mitigate the damage caused by the COVID-19 pandemic (*EURACTIV* 2020). These countries together argued that a step in this direction would be a sign of a strong political union in which member states not only supported, but also trusted each other. Germany, the Netherlands, and Finland were, however, opposed to debt mutualization. Before the beginning of the pandemic, when member states were debating the 2021–7 Multiannual Financial Framework, Austria, Denmark, Sweden, and Denmark (dubbed the 'frugal four') advocated for a more 'responsible' EU budget, meaning its reduction. While Germany was initially reluctant to mutualize debts, it soon became one of the supporters of an ambitious recovery plan. An agreement had to be reached at the European Council in July 2020. It took four days and four nights to convince the 'frugal four' to support this historic decision—that is, to mandate the Commission to borrow €750 billion on the capital markets—as a sign of political unity and solidarity (see Figure 10.2).

BOX 4.7   Spotlight on: EU member state groupings and coalitions

Benelux: In 1944, Belgium, the Netherlands, and Luxembourg signed a cooperation agreement to establish the Benelux Customs Union. Their intergovernmental cooperation has evolved over time and has been extended to include many areas of activity, such as economic policy, sustainability, security, and culture, among many others.

The **V4** was established after the collapse of communism in 1991, when the leaders of Hungary, Poland, Czechia, and Slovakia (after the disintegration of Czechoslovakia) sought to increase their cooperation, to promote stability in the region and to defend their interests in an enlarged EU. The four countries cooperate in a number of fields, such as education, culture, and exchange information on other issues of interest. Their cooperation is not institutionalized and the four countries are often divided on important issues.

The **Baltic Assembly** was established in 1991 and brings together Lithuania, Latvia, and Estonia, which cooperate in many areas including security and foreign affairs, education, science and culture, and economic and social affairs. Their cooperation began in the 1980s, before the dissolution of the Soviet Union, to define together a common Baltic position in an attempt to regain their self-determination. Since the 1990s, their cooperation has been institutionalized, and decisions are taken by the Baltic Assembly, which is composed of 20 representatives per member state.

The Nordic Council is an interparliamentary cooperation established in 1952, including 87 representatives from Denmark, Finland, Iceland, Norway, Sweden, the Faeroe Islands, Greenland, and Aland. The Secretariat General is based in Copenhagen. The work of the Nordic Council is prepared by committees and political groups. It cooperates with the Baltic States and other states from the former Soviet Union.

Other informal **diffused/issue-driven alliances** exist such as: **the Friends of Cohesion** (Bulgaria, Croatia, Czech Republic, Cyprus, Estonia, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Malta, Romania, Slovakia, Slovenia, and Spain), which brings together member states supporting a more ambitious EU budget to support regional development and cohesion policy; on the other hand, the so-called '**frugals**'—that is the governments of Austria, Denmark, the Netherlands, and Sweden—have argued in favour of a reduction of the EU's budget over the past decade. The four countries are among the member states with high levels of GDP.

Sources:
https://www.norden.org/en/nordic-council
https://www.baltasam.org
https://www.visegradgroup.eu
https://www.benelux.int/nl/

4.4 Conclusion

This chapter has sought to shed light on why and how EU member states engage with European integration. To this end, the first part focused on two key theories in EU studies (see section 1.2)—liberal intergovernmentalism and

postfunctionalism—which, through different lenses, attempt to explain the development of the EU and the driving forces behind it. LI emphasizes the centrality of economic preferences, wealth and power, and postfunctionalism shows how important it is to consider belief systems and the support for, or contestation of, the process of integration. Both LI and postfunctionalism provide arguments explaining differentiated integration, which is already institutionalized and takes different forms in the EU today. The chapter then examined how member states shape integration. Looking at how the Council works and votes, it provided some examples of coalitions among member states and illustrated the roles that each member state must perform during the six-month rotating presidency of the Council (of ministers). Finally, the chapter focused on the growing role of the European Council, showing its centrality in the current stage of EU integration, especially when it comes to new issues not previously subject to EU competence, a point explored by new intergovernmentalism.

? DISCUSSION QUESTIONS

1. What are the differences and similarities between liberal intergovernmentalist, postfunctionalist, and new intergovernmentalist accounts of member states interaction with the EU?

2. Is differentiated integration a solution to a problem, or a problem in itself?

3. What are the patterns of coalition formation in the Council and how have they changed over time?

4. How can EU member states shape the EU's development during their time holding the rotating presidency of the Council?

5. How can we explain the growing role of the European Council in EU decision-making?

FURTHER READING

Students interested in furthering their understanding of preference formation in EU member states will find well-elaborated theoretical discussions in Moravcsik (1998) and Schmidt (2006). Bickerton (2012) sheds light on the transformation of nation states into EU member states. Considering that the historical evolution of the continent is key to understanding the European project, students might also find it useful to read the analyses by Judt (2005) and Zielonka (2006). The following books offer theoretical discussion of the new roles of the Council and the European Council: Bickerton et al. (2015) and Fabbrini (2015). Similarly, when looking to better understand attitudes towards EU integration, Brack and Costa (2014) offer both theoretical explanations and empirical studies. Finally, students can find several case studies in Bulmer and Lequesne (2020).

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Brack, N., and O. Costa (eds.) (2014) *Euroscepticism within the EU Institutions* (London: Routledge).

Bulmer, S., and C. Lequesne (eds.) (2020) *The Member States of the European Union* (Oxford: Oxford University Press).

Fabbrini, S. (2015) *Which European Union? Europe after the Euro Crisis* (Cambridge: Cambridge University Press).

Judt, T. (2005) *Postwar: A History of Europe since 1945* (London and New York: Penguin).

Moravcsik, A. (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, NY, and London: Cornell University Press and UCL Press).

Schmidt, V. (2006) *Democracy in Europe: The EU and National Polities* (Oxford: Oxford University Press).

Zielonka, J. (2006) *Europe as Empire: The Nature of the Enlarged European Union* (Oxford: Oxford University Press).

▶ WEB LINKS

https://europa.eu/european-union/about-eu/countries

This is the best place within the EU's website to find information on the member states.

https://www.consilium.europa.eu

The website of the Council and the European Council.

Access the online resources to take your learning and understanding further, including self-test questions with instant feedback, web links, a flashcard glossary, and updates on new developments in EU politics.

www.oup.com/he/kenealy6e

CHAPTER 5

Policy-making in the EU

Daniel Kenealy

Summary

EU policies have a direct effect on citizens' daily lives, and it is important to understand how they are made and who is involved in the process. Most EU legislation is now adopted according to the OLP, under which both the Council and the EP have equal powers. The basic policy-making rules laid down in the EU treaties have been supplemented over the years by both formal agreements and informal understandings between the main actors in the decision-making institutions. The result is a highly complex process, involving large numbers of participants from each of the member states in a constant cycle of communication and negotiation at all levels. The process is followed closely by the international media and by interest representatives, who frequently try to influence the outcome. EU policy-making is open to criticism regarding its transparency and efficiency, but it continues to deliver a rather impressive amount and array of policy outcomes.

5.1 Introduction

The EU has an impact on many aspects of the daily lives of citizens in Europe and beyond. Yet the ways in which EU policies are devised, formulated, and adopted remain a mystery to most EU citizens. There is a tendency in the member states to view EU policy-making as something that happens 'over there' in Brussels. 'There' is seen as a distant, unfamiliar, even threatening place, populated by individuals from different countries with different interests and goals. As previous chapters have demonstrated, the very act of making public policy collectively for 27 countries is presented by some as involving a loss of national sovereignty, rather than as a pooling of sovereignty to address policy challenges that span national borders. People directly involved in the EU policy-making process are themselves not always necessarily interested in revealing exactly how they make policy in practice. If the policy outcome is unpopular, or fails when implemented, national politicians might find it convenient to blame 'the EU'—or 'Brussels'—rather than accept their own role in the process. On the other hand, if the policy outcome is likely to be popular within a certain community, many may rush to take credit for it. Frequently, if the outcome is 'bad' for a given member state, the EU gets the blame; if the outcome is 'good', the member government claims responsibility.

How can we find out how policies are made? Since the EU is a law-based organization, the first place to look is at the constituent treaties, where all the basic policy-making rules can be found. In the application of these treaties, decades of EU decision-making have produced a range of conventions or accepted ways of doing things that have gradually evolved through social and institutional practice. Such conventions have usually been embraced as a means for increasing the efficiency, democracy, transparency (Box 5.1), or speed of decision-making. Some are formalized in written texts, such as interinstitutional agreements or codes of conduct, thereby adding flesh to the bones of the basic rules. Other more informal practices have not been codified but nonetheless need to be understood in order to gain a realistic picture of how EU decision-making operates in practice.

BOX 5.1 Key concepts and terms

Civil society refers to the broad collection of associations and groups (including private firms, trades unions, community groups, and NGOs) active between the level of the individual and the state. These groups generally operate independently of direct governmental control.

   Competence refers to the division of powers between the EU and the member states (see Table 5.1).

   Decisions are one of three types of EU legislative act—the others being directives and regulations (see section 5.2.1). Decisions are directly applicable

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and binding on those to whom they are addressed, such as a member state or a company.

Directives are EU legislative acts that set goals that EU member states must achieve. The member states must pass their own laws and/or regulations to meet the goals set in the directive—a process called transposition (see section 5.2.1).

A **dossier** is a file or folder of papers, drafts, notes, and other relevant materials pertaining to a specific policy instrument that is being negotiated.

Fonctionnaires, or EU officials, are international civil servants, who have successfully passed an entrance exam known as the 'concours' and are involved in administration in the EU's institutions and much of day-to-day policy-making.

The **legal basis** of an EU law is the treaty article or articles (cited in the legislation) which give(s) the EU authority to act in that area and lay(s) down the decision-making rules that apply.

Legislative acts are (Article 289 TFEU) regulations, directives, or decisions adopted under the OLP or a special legislative procedure (see Box 5.2). These acts are published in the *Official Journal of the European Union*. Adopted decisions can also be non-legislative (see Box 5.3).

Lobbying is an attempt to influence policy-makers to adopt a course of action advantageous, or not detrimental, to a particular group or interest. A lobbyist is a person employed by a group, firm, organization, region, or country to carry out lobbying. Lobbyists in Brussels are also referred to as interest representatives.

Opinions are statements issued by the EU institutions, stating a position on a particular issue, but without creating any legal obligations. They are not binding.

A **rapporteur** is a member of the EP who has been given responsibility for preparing a report for one of the Parliament's committees on behalf of the rest of its members.

The EU institutions issue **recommendations**, typically to state an official view on an issue and/or to suggest a particular course of action. They are not binding and do not create legal obligations.

Regulations are binding legislative acts that apply directly across the EU.

Transparency refers to the process of making EU documents and decision-making processes more open and accessible to the public.

Transposition is the process through which EU member states incorporate EU directives into national law. Transposition has to be completed by a certain deadline, specified in the directive, and is monitored by the Commission as part of the process of policy implementation (see section 7.2).

5.2 How It Works *Formally*

The powers of the EU's institutions have been formally agreed by the member states, and are clearly stated in the treaties. Decisions are now taken at European level in a large number of policy areas, involving the EU and its institutions to various degrees. Despite the claims of many eurosceptics that the EU is undemocratic, intrusive, and populated by faceless bureaucrats, the EU's institutions are made up of individuals from each of the 27 member states, who are either elected or appointed to their roles by elected governments or parliaments through transparent and accountable procedures. In fulfilling their respective roles, these individuals must in turn follow strict rules and procedures that are open to scrutiny by a variety of observers.

5.2.1 Underlying principles

The EU cannot unilaterally decide to get involved in a particular policy area. There are plenty of checks and balances to ensure that it does not overstep its assigned policy-making role. The first constraint is that the EU can only intervene in a given policy area if the member states themselves have empowered it to do so: in other words, the Union can act only to the extent—and following the rules—laid down in the treaties. Article 4 TEU specifies: 'competences not conferred upon the Union in the treaties remain with the Member States'. Where it *does* have competence (Box 5.1 and Table 5.1), responsibility may lie exclusively with the EU (as in external trade policy), or primarily with the member states (as in development cooperation). Sometimes, it is shared between the member states and the EU (as in transport policy). Given that the treaties are the primary law of the EU, every piece of EU legislation (secondary law) must cite one or more treaty article(s) as the authority for EU involvement in that policy area (the so-called 'legal basis'—Box 5.1).

EU law includes a plethora of instruments: regulations, directives, decisions, recommendations, and opinions (Box 5.1). An important distinction is between regulations and directives, both of which are legislative acts (Box 5.1). Regulations are directly binding and must be applied across the EU. For example, to ensure common safeguards on goods imported from outside the EU, a regulation was passed (2015/478). A directive, however, sets out a goal that member states must achieve but grants discretion to the member states about which domestic laws and policies might be required to meet the goal. For example, the EU passed a (controversial) directive about copyright in 2019, which was designed— among other things—to ensure big technology companies such as Alphabet and Facebook compensate media companies for using their content. When that directive entered into force on 7 June 2019, member states had two years to introduce national laws to achieve the goals of the directive. The process by which member states incorporate EU directives into national law is called transposition (Box 5.1). National authorities must communicate the measures taken to the Commission, which is charged with overseeing the process and can bring infringement proceedings against member states that fail to transpose directives fully and/or effectively (see section 7.2). It has been suggested that, for clarity and public understanding, regulations should be called 'laws' and directives should be called 'framework laws'.

Second, the EU is required to respect two fundamental principles when it makes law and policy. The first is *subsidiarity*, meaning that the EU should only act in circumstances where its intervention is likely to be more effective than that undertaken by the member states individually. For example, the Union has competence in

TABLE 5.1 The EU's competences

Exclusive competence (Article 3 TFEU)	Shared competence (Article 4 TFEU)	Competence to support, coordinate or supplement actions of the member states (Article 6 TFEU)	Competence to provide arrangements within which EU member states must coordinate policy (Article 5 TFEU)
Only the EU can act.	Competence shared between the EU and the member states—member states can adopt legally binding acts only where the EU has not exercised its competence (or has explicitly ceased to do so).	The EU cannot adopt legally binding acts that require the member states to harmonize their national laws and regulations.	If the member states wish, the EU can play a particular role, or play it to beyond what is normally allowed under the treaties.
• Customs union • Trade policy (common commercial policy) • Competition rules for the single market • Monetary policy (for member states whose currency is the euro) • Marine conservation (under the Common Fisheries Policy)	• Internal market • Social policies (as defined in TFEU) • Economic, social and territorial cohesion • Agriculture and fisheries • Environment • Consumer protection • Justice and fundamental rights • Migration and home affairs • Certain aspects of public health • Transport • Energy • Research • Development cooperation and humanitarian aid	• Industry • Culture • Tourism • Education and training • Youth • Sport • Civil protection • Administrative cooperation • Certain aspects of public health	• Coordination of national economic policies • Coordination of national employment policies • Defining and implementing the CFSP • Most social policies • A flexibility clause allows the EU to take action outside its normal areas of responsibility, but subject to strict conditions

environmental policy where collective European action is required, but subsidiarity means that the EU is not involved in garbage collection (although it may regulate packaging waste for products sold on the European market). The second fundamental principle is *proportionality*. The EU's involvement is limited only to what is required to fulfil the objectives outlined in the treaties. Thus it can place labelling requirements on the sale of particular foodstuffs, but cannot ban them outright (unless they are proven to be very dangerous).

Even clearing these initial hurdles of determining competence, subsidiarity, and proportionality does not imply a successful outcome for a proposal. It also needs political approval. Under the OLP, the European Commission—a body representing the general interest of the EU—proposes draft legislation. Two other institutions, the EP (composed of the representatives of the EU's citizens) and the Council (composed of representatives of the member state governments) are designated as co-legislators. This means that a new piece of legislation can only be adopted if both the EP and the Council (the latter by a qualified majority) agree to its content. Put another way, nothing can be enacted without a high level of political support.

It is important to note the changes in terminology that have taken place. The OLP was previously called the co-decision procedure when it was first introduced as part of the Maastricht Treaty in 1993. At that time, it covered a limited number of areas, most of which related to the single market. In the Treaty of Amsterdam, co-decision was simplified and its overall scope was extended to include areas like transport, environment, justice and home affairs, employment, and social affairs. Co-decision was subsequently retitled as OLP in the Lisbon Treaty, and now covers fully 85 areas of EU policy, including agriculture, fisheries, and the common commercial policy. Special legislative procedures—called the Consultation and Consent procedures—exist for certain more sensitive policy areas, including taxation (Box 5.2).

BOX 5.2 Spotlight on: Special (non-'Ordinary') legislative procedures

Most EU legislation is adopted by means of the **OLP** (previously known as the **Co-decision** procedure). However, there are two special legislative procedures: the **Consent Procedure** (previously known as the Assent Procedure) and the **Consultation Procedure**. Like the OLP, both procedures typically begin with a Commission proposal.

Under the **Consent Procedure** the Council can adopt legislative proposals only after obtaining the consent of the EP. Crucially, the EP does not have the power to amend a proposal, only to accept or reject it. The Council cannot overrule the EP's opinion meaning that, although the EP has a limited range of options (accept or reject), it does hold a veto-player role in the procedure, allowing it to engage informally with the Council, signalling what it would and would not be prepared

to accept. The Consent Procedure is mostly used to ratify—or not to ratify—international agreements negotiated by the EU and occasionally for ordinary legislation, for example on legislation to combat discrimination. It is also used to approve the accession of new EU member states, to approve the arrangements for a member state's withdrawal from the EU, and to approve the multiannual financial framework for the budget (see Box 7.2).

Under the **Consultation Procedure** the Council adopts a legislative proposal after the EP has submitted an opinion on the proposal. The EP may approve, reject, or propose amendments to a legislative proposal but the Council is not legally obliged to take the EP's opinion into account. The procedure gives the EP some limited power of delay, although the EP cannot withhold its opinion indefinitely. The Consultation Procedure used to be far more widely used but, as the EP has grown in power, is now only used in a few areas of legislative activity, for example internal market exemptions and cross-border police operations.

Thinking of the supranational-institutional spectrum introduced in Chapter 1, the **Consent** Procedure can be considered more supranational than the **Consultation** Procedure, given that it empowers the EP to a greater extent. CFSP decision-making is more intergovernmental, reflecting the 'high politics' of foreign and security policy, policy areas where national sovereignty is closely guarded.

5.2.2 Principal actors

The treaty describes the basic composition and powers of the main institutions and bodies that are directly involved in the EU's policy-making process and Chapter 3 explores those institutions in depth. Recall that the European Commission enjoys an almost exclusive right to initiate legislative proposals, with its College acting collectively—formally by simple majority, but usually by consensus. MEPs in the EP have the power to adopt, amend, or reject the Commission's legislative proposals, by majority, and then seek agreement with ministers from the member states who are represented in the Council, which also adopts, amends, or rejects the draft legislation. Only when both agree can the legislation be adopted. The European Council, comprising the heads of state or government from each member state, occupies an imprecise but significant role in the policy process. It is supposed to set the strategic priorities of the EU, but sometimes becomes involved in the policy-making process, either at the beginning, when it may set out strategic political directions or key priorities, or towards the end, if sensitive political issues are at stake. However—despite bringing together Europe's most powerful political leaders—the European Council does not have the power to take legislative decisions.

The treaties also make reference to the Economic and Social Committee (comprising economic and social actors from each of the member states), and the Committee of the Regions (bringing together representatives of regional and local governments), which are consulted for their specialist views in policy areas within their remit (Box 3.6).

Figure 5.1 Flowchart of Ordinary Legislative Procedure
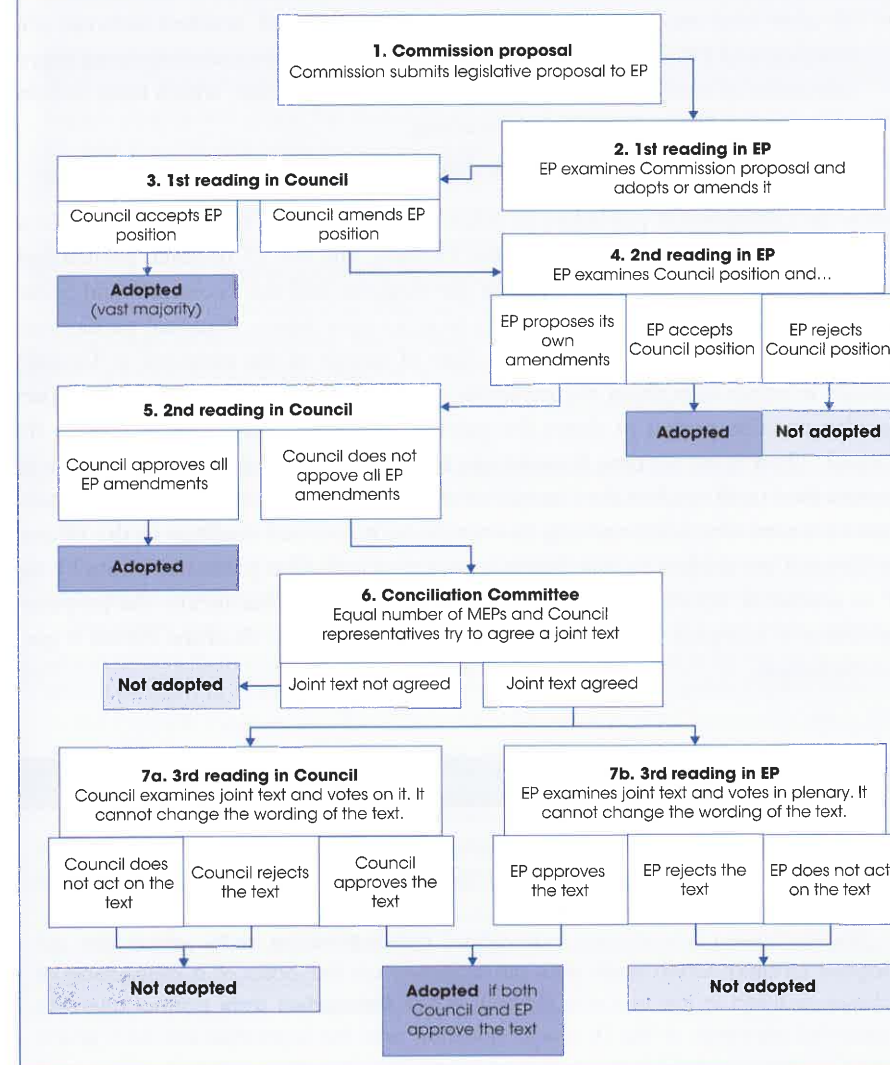
5.2.3 Key stages

Each chapter of the treaty dealing with a specific policy area lays down the procedure according to which policy decisions are made in that area. For legislation—not all EU decision-making involves legislation (Box 5.3)—that is normally the OLP (Figure 5.1). On the face of it, the procedure is very simple:

- The Commission produces a draft and sends it to the EP and the Council.
- The EP and the Council discuss the draft separately in the course of one or two readings apiece, and may approve, amend, or reject the text.

- Only if Parliament and Council reach agreement on a mutually acceptable text is it adopted as a legislative act.

- If, after two readings, agreement has still not been reached between the Council and EP, a joint conciliation committee is convened comprising representatives of both institutions to try to find a compromise, which must then be endorsed by both sides in a third reading.

- If no agreement can be reached by this stage, the proposal is not adopted.

When the Commission publishes its initial proposal, it is sent at the same time to a variety of different bodies—the EP, the Council, and the 27 national parliaments and, where required, the Committee of the Regions and the Economic and Social Committee. Some responses are subject to strict time limits. National parliaments have a period of eight weeks from the date of receipt of the proposal to formally indicate whether they think the principle of subsidiarity has been respected. They can also use this period to shape the position that their minister will take in the Council. There is no set time limit for the EP and the Council to complete their respective first readings, but the Council must await the EP's position in order to take it into account when determining its own position. Second readings in the EP and the Council are subject to time limits, as is the conciliation process. Failure by the EP to amend or reject the Council's position by the deadline means the proposed legislation is accepted. Failure by the Council to act by the deadline means it goes to conciliation.

BOX 5.3   Beyond legislative acts and procedures

Box 5.2 outlined two 'special' procedures—**Consent** and **Consultation**—that are used in the EU, albeit it less frequently than the OLP. However, not all policy decisions in the EU are legislative.

The European Commission can adopt **non-legislative acts**, which are still legally binding. Often such acts are adopted on the basis of a delegation of power granted in the text of a legislative act. **Delegated acts** cannot alter the essential elements of the EU law in question and the legislative act from which the Commission draws the power must specify the objectives, content, scope, and duration of the delegation of power. The EP and the Council can revoke the delegated power at any moment, or object to specific delegated acts, causing them to fall.

Implementing acts are another form of non-legislative act. Although the member states are primarily responsible for implementing EU law, in areas where uniform implementation is necessary—for example, taxation, food safety, agriculture—the Commission (or exceptionally the Council) can adopt implementing acts. Before doing so, the Commission typically consults a committee on which each EU member state is represented—a process called **comitology** (see

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Finke and Blom-Hansen 2021)—and solicits feedback on the draft act from various policy stakeholders. The process of adopting delegated and implementing acts involves consultation with and negotiation among a variety of actors and the issues discussed throughout this chapter are relevant in this context. Both delegated and implementing acts grant the Commission important rule-making powers, with the EP and the Council keen to ensure appropriate controls (Brandsma and Blom-Hansen 2016).

Another important non-legislative procedure is the EU's annual **budgetary process**, set out in Article 314 TFEU (see Benedetto 2013). The Commission prepares and presents a draft budget, which gives it significant influence (Goetz and Patz 2016). The Council adopts a position on the draft and sends it along to the EP with an account of its reasoning. The EP then has 42 days to respond, during which it can approve the Council's position or decline to take a position, in which case the budget is considered finally adopted. The EP can also suggest amendments, in which case the amended draft is returned to the Council and the Commission. At that point the EP president and the president of the Council convene a Conciliation Committee, which then has 21 days to agree a joint text. The Commission participates in the Conciliation Committee and attempts to reconcile the positions of the Council and the EP. The treaty thus specifies strict time limits but the institutions agree on a practical timeframe before the budgetary process begins.

The **CFSP** (see section 8.4) is a non-legislative area of EU decision-making, which follows its own distinctive procedures. Any member state, or the high representative (with or without the Commission's support), can submit CFSP initiatives to the Council. Decisions in the Council are usually taken by unanimity although there are some exceptions. For example, in some areas member states can constructively abstain, which allows them to opt out of applying CFSP decisions without vetoing them. The EP and the Commission have far less power in this policy area than they do in others, although various forms of influence exist, for example, the high representative is also a member of the Commission and thus part of that College team (section 3.4) and the EP must be consulted on the main aspects and the basic choices of the CFSP, and can exercise influence through its role in various budgetary processes.

If agreement is reached in the negotiations between Parliament and Council, the final adoption of a piece of legislation can be a formality. On the Council's side, it takes the form of agreement at a ministerial meeting, normally passed without discussion and frequently by consensus, on a recommendation from Coreper. On the Parliament's side, the final adoption of a piece of legislation is by a vote after a debate.

The OLP effectively follows the three key stages of policy-making:

1. Identifying specific goals in a given policy area (agenda-setting),

2. Policy-makers discussing alternative ways of achieving them (negotiation),

3. Reaching agreement on the end product (final decision).

The agenda-setting role is attributed mainly to the Commission, while the EP and the Council are the principal players in the second and third stages (i.e. negotiation and final decision). In practice, however, the policy cycle is not so neatly organized and these three stages are rather more fluid (Pollack 2020).[1] A 'final decision', when it occurs, is often merely the rubber-stamping of agreements reached earlier. Knowing when and where to intervene in the policy-making process is therefore very important for those trying to affect its outcome. This means understanding what happens in *practice* as much (or more) as what happens *formally*, both in terms of the key actors, and the policy area itself.

5.3 What Happens *in Practice*

Understanding the formal procedures of the OLP is an essential first step. But being able to recite the OLP and identify the treaty articles underpinning it can only take you so far if the goal is to understand how policy is actually made in practice. Decades of research on public policy—across the world, not just focused on the EU—has revealed policy-making to be a complex process involving many important actors who operate outside the spotlight and in ways that are not set out in formal documents (Cairney 2019). Taking agenda-setting as an example, although it might seem that *formally* the Commission is the principal agenda-setter (Kassim et al. 2017), research has explored the various ways *in practice* that the European Council, the EP, and the CJEU can set, or significantly shape, the EU's policy agenda (Deters and Falkner 2020).

In getting to grips with EU policy-making, three important points need to be noted. First, although the institutions are often referred to by shorthand—'the Commission', 'the Council', and 'the Parliament'—each is a complex **hierarchy**. A lot of important policy work takes place in specialized committees and groups within the institutions. Second, the relationships between the institutions are densely **networked**. Much of the work of brokering policies and reaching compromise takes place within these networks. Understanding the hierarchies within these institutions—and the networks that connect them—is vital to identifying where the real action of policy-making takes place. Third, *a variety of actors* beyond the EU's institutions and member states are involved in policy-making. Brussels, like most national capitals, is home to interest representatives (lobbyists) who try to shape and influence the policy agenda, as well as a press/media corps whose reporting and framing of policy developments also play an important role.

5.3.1 Institutional hierarchies

The treaty suggests that the EU's three main institutions—the Commission, the Council, and the EP—operate as a triangle, each one directly connected to the

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[1] Once agreement is reached on a policy, it must then be implemented. The EU relies heavily on member state governments for policy implementation (see section 7.2).

other two. However, they can more accurately be visualized as three icebergs, whose tips are inhabited respectively by the commissioners, the ministers, and the MEPs. However, those iceberg tips are only the smallest, most publicized and visible part of far larger masses. Each commissioner and national minister is assisted by a large number of aides and officials who do the preparatory work on draft legislation, often leaving just a small number of issues to be dealt with directly at formal meetings of the Commission and Council. Decisions in all three institutions involve the accommodation of competing interests, with the result that the single 'position' of each institution is only arrived at after a process of intense internal negotiation.

Officials in the Commission—the '*fonctionnaires*' (Box 5.1)—carry out much of the detailed policy-making work. They are responsible for the drafting of the Commission's proposals and may attend meetings of the EP committees and Council working groups when they are being discussed. Turf battles within the Commission are not unknown, with the result that the 'Commission position' may not be supported with equal enthusiasm by all those bound by it. For example, a proposal to ban or restrict the use of a pesticide may be energetically supported by DG Environment, but only lackadaisically (if at all) by DG Agriculture.

The EP's detailed legislative work is done in its 20 standing (or permanent) committees, and most MEPs belong to one or more of these, according to their policy interests or expertise. The committees vary in size but each contains representatives of all the EP's political groups in proportion to their size. At committee meetings, the MEPs discuss the Commission's proposal in detail and agree on a report (prepared by a *rapporteur*—Box 5.1) that contains those amendments that have attracted the necessary majority. The *rapporteur*'s report is then sent to the EP plenary session, where the legislation is discussed and voted upon by all the MEPs, whereupon it becomes 'the EP's position'. *Rapporteurs* enjoy formal and informal agenda-setting powers, and skilful MEPs can use the role to influence policy outcomes (Thierse 2019).

MEPs are accountable to their respective electorates. Thus, they try to ensure that the interests of their constituents are represented and protected when they vote on proposed legislation. However, most MEPs also belong to one of the EP's political groups, whose members try to vote together on draft legislation. The EP's position is therefore normally a compromise between different positions among the MEPs, some of whom will have been out-voted in the committee or the plenary on details of importance to them.

The Council is similarly complex and meets in different policy-focused configurations—Environment Council, Economic and Financial Affairs, Agriculture and Fisheries, and so on. A General Affairs configuration is tasked with coordination but there is no hierarchy among the configurations. Given that different national ministers attend different configurations, the total ministerial membership is large (more than 250 people) and changes as a result of national elections, cabinet reshuffles, or other reallocations of responsibility in the member states. The Council's political approach is also subject to change, as both left- and right-wing parties move in and out of power, or governing coalitions are formed or reformed at national level. Many different views co-exist in the Council, requiring a constant process of negotiation in order to achieve 'the Council position'.

A key figure in determining the Council's position is the Council chair, occupied by the minister from the member state that holds the rotating Council presidency (except in the Foreign Affairs Council, which is chaired by the high representative and which does not normally deal with legislation). Council presidencies can be more or less successful in terms of their ability to set, or at least shape, the policy agenda (see Tallberg 2004; Thomson 2008; Smeets and Vennix 2014). The Council presidency's ability to determine which issues are discussed, when, and for how long, is thought to be a potentially useful power in the policy-making process (Häge 2017), although in practice the short tenure means a largely inherited agenda.

The detailed preparatory work for Council meetings takes place first in one or more of its 150 or so specialist technical working groups. These groups are composed of officials from the relevant national ministries in the member states, who discuss the Commission proposal article by article, registering agreements and disagreements and suggesting amendments. Any provisions that cannot be agreed at working group level (usually the more political aspects of the proposals) are sent up to **Coreper**. There they are agreed or sent back down to the working group or up to the ministers in Council for further discussion and/or agreement. A representative of the Commission attends all meetings in the Council hierarchy when a Commission proposal is being discussed. Officials from the Council's General-Secretariat are also present, to take minutes and advise the presidency. The national civil servants who sit on these preparatory bodies negotiate on behalf of their member governments. But only ministers in the Council can take the final decision, which then constitutes 'the Council's position'.

5.3.2 Interinstitutional networks

Returning to the iceberg metaphor, the Commission, Council, and Parliament are much more interconnected and networked beneath the surface of the water than above it. Today, the connections between the legislative actors at EU level are extensive, complex, and shape much of what happens on a day-to-day basis. Negotiations between the institutions—and other key interests outside of the formal policy system—are an ongoing part of the policy process: between stakeholders and the Commission when the proposal is being drafted, between left-wing and right-wing political groups when the EP is trying to agree its position, and often between the Council presidency and a group of member states trying to block the adoption of a compromise.

In order for new legislation to be adopted, the OLP requires a high level of agreement among the main institutional actors, securing both a qualified majority in the Council, *and* a majority in the Parliament. Many different interests have to be reconciled at all stages of the procedure. The result is a constant search for compromise, with explanation, persuasion, and negotiation taking place at multiple levels both within and between the institutions. The importance of compromise is evident in the ways in which the institutions organize themselves and their respective work programmes in order to fulfil their legislative responsibilities. As mentioned above, written agreements co-exist with a number of tacit understandings about 'how things should be done' in order to ensure a harmonious working environment that encourages cooperation and facilitates agreement.

Interinstitutional cooperation and transparency are the two key prerequisites for an efficient policy-making process that is based on compromise and consensus. In the 1990s, early experience with the co-decision procedure/OLP made clear that, if agreement was to be reached within a reasonable amount of time, interinstitutional discussions and negotiations needed to get underway sooner rather than later, once the Commission had presented its proposal. Regular meetings, known as **trilogues** (Box 5.4), were therefore scheduled between the key players in each of the three institutions to assist in the search for compromises (Delreux and Laloux 2018; Brandsma et al. 2021). They constituted a relatively 'safe' forum for negotiating compromises before proposals were officially put to a vote. In *practice*, the most commonly used legislative procedure is a single reading with a trilogue (Figure 5.2). Over recent years, trilogues have come under some scrutiny (Hillebrandt and Leino-Sandberg 2021). Some observers of the EU policy-making process have criticized the process for prioritizing speed and efficiency over inclusive and transparent decision-making.

BOX 5.4 How it really works: Trilogues

Trilogues are three-way meetings of representatives from the Commission, the Council, and the EP, to find compromises during legislative (and budgetary) procedures (Brandsma et al. 2021).

Bicameral legislatures typically have mechanisms to reconcile differences between the two legislative chambers (such as the 'Conference' between the US House and Senate, or the *Vermittlungsausschuss* between the Bundestag and Bundesrat in Germany). The formal process laid down in the EU treaty for this is the conciliation committee. However, this became increasingly complicated as the EU enlarged, as it is composed—on the Council side—of one representative per member state and an equal number of MEPs. Negotiations with over 25 people on each side were unwieldy, even with the Commission there playing the role of 'honest broker'.

As a result, informal contacts ahead of formal conciliation meetings began to develop—and then began to appear at earlier stages in the legislative procedure once the Amsterdam Treaty made second readings unnecessary if Parliament and Council approve identical texts in first reading. These informal contacts were typically between the EP committee chair or *rapporteur* and the Council presidency, but over time became more organized and standardized. Now called trilogues, they have largely replaced conciliations. Over time, the practice of holding trilogues at first reading stage has become the norm (see Figure 5.2 and Table 5.1). Formal provision for their conduct has been laid down in the EP's rules of procedure. Those rules require a mandate to be granted by the EP to its representatives, for those representatives to report back on developments, and for the EP delegation

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in a trilogue to be led by the parliamentary committee's *rapporteur,* but accompanied by representatives of all the political groups. Any agreement reached in trilogues has, of course, to then be approved by both the EP and the Council.

During the past three years for which figures are available the number of trilogues was 309 (in 2018), 265 (in 2019), and 175 (in 2020). While almost everyone involved in EU policy-making agrees that they are successful measured against the yardstick of efficiency, they have generated some criticism on the grounds of transparency. Trilogues are not held in public and are not minuted. Even if the subsequent adoption of the legislation is debated and voted in public, the trade-offs in the trilogues are opaque.

Source: Council of The European Union (2021) 'Ordinary Legislative Procedure: Files concluded since the entry into force of the Treaty of Amsterdam', available at: https://www.consilium.europa.eu/media/48388/21-02-08-general-overview.pdf
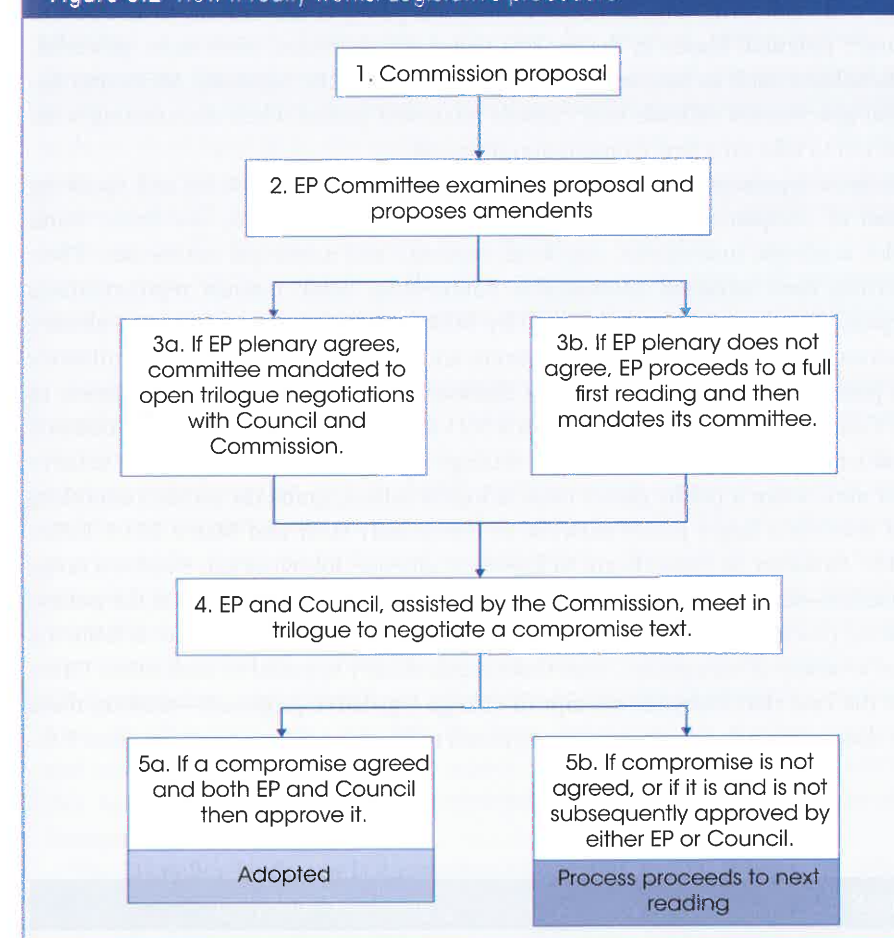
An interinstitutional agreement on better law-making, published in 2003 and updated in 2016, lays down how the Commission, Council, and EP coordinate their individual and joint legislative activities (OJEU 2016). The three institutions agreed to keep one another permanently informed about their work throughout the legislative process and to synchronize the handling of **dossiers** (Box 5.1) by their respective preparatory bodies. They have also developed mechanisms of interinstitutional signalling to indicate what will or will not be acceptable to the relevant legislative partner. Thus, although the OLP requires the Council to await the EP's first reading position before it adopts its own common position, Council ministers frequently issue a 'political agreement' to indicate which elements of the Commission's proposal (and the EP's proposed amendments) would or would not be acceptable to the Council. Similarly, the EP might choose, after adopting amendments, to postpone the final vote to establish its first reading position on a Commission proposal, in order to negotiate with the Council.

In 2016, the presidents of the three institutions signed their first Joint Declaration about legislative priorities for 2017. They followed this with a second Joint Declaration, signed in 2017, to identify priority files for 2018–19. Joint Declarations set out broad priorities for the EU and identify the important legislative files that will help deliver on those priorities. The idea behind them is to bring the three institutions together more closely in the programming of legislation. The first two declarations identified fully 90 legislative files to be given priority treatment during 2017–19. Initial reactions suggest that EU policy-makers find the Joint Declarations helpful in focusing attention and resources on key priorities. They are another effort to entrench and streamline interinstitutional working.

5.3.3 A variety of actors

Neither EU institutions nor member states operate in a vacuum when engaging in policy-making. The policy outcomes they produce affect countless people who need to be

Figure 5.2 How it really works: Legislative procedure

1. Commission proposal

2. EP Committee examines proposal and proposes amendents

3a. If EP plenary agrees, committee mandated to open trilogue negotiations with Council and Commission.

3b. If EP plenary does not agree, EP proceeds to a full first reading and then mandates its committee.

4. EP and Council, assisted by the Commission, meet in trilogue to negotiate a compromise text.

5a. If a compromise agreed and both EP and Council then approve it.

Adopted

5b. If compromise is not agreed, or if it is and is not subsequently approved by either EP or Council.

Process proceeds to next reading

informed about them, and who may have valuable contributions to make regarding their design. As a result, large numbers of people are engaged in identifying the state of play on dossiers under discussion and, more controversially, in ensuring that particular interests are either protected or are at least unharmed by proposed legislation.

Although the Commission enjoys the right of legislative initiative—and the 'power of the text' is an important one—it is generally accepted that the Commission should be open to input from interested parties. It is also in the Commission's interest, from an early stage in the process, to determine the best way to deal with an existing situation, and to identify possible difficulties of implementation once the legislation has been enacted. To this end, the Commission engages in widespread consultations in order to ensure that its proposed legislation will be both fit for purpose and likely to be acceptable to a majority of stakeholders (Bunea 2017). The information gathered during this process is important and useful to policy-makers who have to be aware of the wide range of interests that need to be

accommodated in any proposed legislation. Since 2001, the Commission has taken steps to diversify the ways in which it conducts policy consultations, in an effort to counter potential biases in the process in favour of certain, often more powerful, stakeholders such as business (Binderkrantz et al. 2021). Similarly, MEPs and national government officials may consult interested parties when determining what position to take on a new Commission proposal.

Interest representatives (or lobbyists) based in Brussels work for and speak on behalf of companies, trade associations, trades unions, NGOs, law firms, think tanks, academic institutions, and local, regional, and municipal authorities. Their activities have attracted considerable controversy. Some interest representatives prepare amendments to be presented by MEPs in the EP's committee and plenary sessions. Others target national ministers and officials in an attempt to influence the position they will defend during discussions and votes on draft legislation in the Council. Research on **lobbying** (Box 5.1) in the EU echoes much of the research conducted on lobbying in national settings. Lobbyists often struggle to achieve their aims when a public policy issue is highly salient, grabs the public's attention, and involves a larger policy network or community (Dur and Mateo 2014; Keller 2018). However, as issues begin to lose their salience, lobbyists can employ a range of tactics—some noisy, others quiet (Culpepper 2011)—to try to shape the policy-making process in ways that meet their interests. On most issues, there is lobbying from a variety of viewpoints, sometimes diametrically opposed to each other. Often it is the case that lobbyists attempt to change legislative proposals—making them less damaging to their interests—as opposed to blocking them altogether (Box 5.5).

BOX 5.5 How it really works: Smoking guns and lobbying

The EU adopted a revised Tobacco Products Directive in March 2014. The directive had a dramatic and controversial passage, involving the resignation of the responsible Commissioner, John Dalli, over 'cash for access' allegations that were subsequently shown to be groundless, and a burglary at the Brussels offices of two anti-tobacco NGOs. The Tobacco Products Directive has been described as the most lobbied dossier in EU history. The tobacco companies employed a significant number of lobbyists (more than 160 by Philip Morris alone) and numerous third-party groups with links to the tobacco industry joined the effort. While the directive was passed, researchers have concluded that efforts by lobbyists to amend, or at least delay, the proposal were partially successful with, for example, the 'plain packaging and point of sales display ban removed during the 3-year delay in the Commission' (see Peeters et al. 2016). Crucially, however, the lobbyists failed to stop the legislation. Similarly, and more recently, it has been suggested that lobbying on behalf of the financial services industry was successful in altering proposed directives for a European financial transactions tax (Kastner 2017).

In 2011, in an effort to shed some light on their existence and activities, the Commission and the EP amalgamated two previously separate registers and established a common Transparency Register for interest representatives. The Transparency Register was upgraded in 2021 and the Council has now signed up to it, although it is optional for member states' permanent representations in Brussels to do so. As of April 2021, this register listed 12,489 organizations—with the equivalent of 24,703 people working full-time—of which 1,594 people had registered access to the EP. It is difficult to identify the precise number of people engaged in lobbying the EU because entries in the register are voluntary. However, commissioners, most MEPs, and senior officials in the EU's institutions will not normally meet lobbyists who are not on the register, meaning that in practice there is a strong incentive to register.

Under the register's terms, interest representatives must register and undertake to comply with a code of conduct if they wish to access the buildings or meet senior EU officials (who will not meet with those not on the register, and will log any meeting with those that are). In the EP, participation as a speaker at events organized by committees or intergroups (unofficial groupings of MEPs who are interested in a particular topic) is conditional on registration. The code of conduct requires interest representatives to: declare what interests they are representing; provide information on their staff, finance, clients, and any affiliation they have; not engage in any covert activities; and accept that they may be subject to investigations. The EP, Commission, and Council set up a joint secretariat to monitor compliance. Also, the EP rules of procedure now lay down that *rapporteurs*, shadow *rapporteurs*, and committee chairs shall, for each report, publish online all scheduled meetings they had on the matter with interest representatives falling under the scope of the Transparency Register.

The EU policy landscape is a complicated one and, in that respect, no different from the policy landscape in any advanced democracy. Governmental actors live and work alongside lobbyists but also alongside think tanks—often with political agendas—who churn out policy proposals and a large press corps that frames much of the broader political and policy debate (De Bruycker 2019). Coalitions of different types of actor with shared policy interests form to advocate for policy change (or continuity in the face of calls for change). These coalitions are often vitally important in determining the policy agenda and the specifics of EU legislative output (Quaglia 2010; Rozbicka 2013; Donnelly 2018). But, unlike formal institutions, they are not always easily identifiable and researchers have to get up close to trace their activities and influence.

5.4 Assessing the Process

While a detailed examination of the process may enable us to understand *why* the process works in the way it does, it is worth asking whether the process itself can be viewed as transparent and efficient. These questions are related to—but distinct

from—exploring the extent to which the EU is *democratic* (an issue that is discussed in depth in Chapter 6). As discussed in section 5.3.3, the EU and its member states have taken steps to try and improve transparency and to open up the policy process to a broader range of stakeholders. However, the EU is not immune from the power imbalances and asymmetries of influence that characterize all policy systems. Ultimately, policy-making is political, and politics is fundamentally about power and influence.

5.4.1 Is the process transparent?

Concern about transparency has resulted in a number of measures aimed at making the policy-making process more open to the public. The Interinstitutional Agreement on Better Law-making, discussed above, was not just about stronger net-working and joint working between the EU's institutions. The EU institutions them-selves also undertook to keep the public better informed at every stage, including by broadcasting Council's political debates and votes on legislative proposals, and publishing the results of their deliberations. Commitments such as these involved more of a cultural shift for the Council than for the Parliament. Contrasting atti-tudes towards transparency within those two institutions are in large part explained by the different nature of the policy-making process within them. The Parliament's committee and plenary sessions have always been open to the public and are broad-cast live, and the majority of its parliamentary documents are available in all 24 official languages in electronic format via a register. Such transparency would—or should—be considered routine in any well-functioning democratic system.

Decision-making within the Council, on the other hand, has historically been more opaque, due to the so-called 'consensual reflex' that lingers throughout its various layers as a consequence of the EC's original voting rules based on unanim-ity (Heisenberg 2005). For many years after majority voting rules were introduced, national officials and ministers still continued to try to reach agreements acceptable to as many members of the Council as possible, in an attempt to avoid publicly out-voting one or more of their colleagues, and when votes were taken, the voting records were not publicized (the chair would simply conclude that the necessary majority had been reached). Only since the introduction of co-decision in 1992 has data on voting at ministerial level in the Council been made publicly available.

Early research on voting in the Council revealed a culture of consensus—formal votes and divisions were quite rare, even if heated policy debates might have preceded the final moment of decision (Hayes-Renshaw and Wallace 2006; Novak 2013; Häge 2017). Various factors—including geography, economic preferences, and political ideology—play a role in shaping how member state governments ap-proach negotiations in the context of Council decision-making (see, for example, Hosli et al. 2011; Thomson et al. 2012; König and Luig 2012; Bailer et al. 2015). More recent research hints at the development of more politicized patterns of voting in the Council (Bressanelli et al. 2020; Pircher and Farjam 2021), especially as the EU has become more politicized and visible in domestic political debates.

The Council has slowly improved access to information about its meetings and its documents. Online streaming of parts of Council meetings is now common-place. Nevertheless, the real negotiations continue to take place away from the cam-eras, lending credence to the view that most deals are still done behind closed doors in the interests of achieving consensus. The Council's processes in its preparatory bodies were judged to constitute 'maladministration' by the European Ombudsman (2018). The Council continues to be divided into a minority pro-transparency coalition and a majority of more sceptical member states, who have managed to slow down the pace of transparency within the Council since 2006 (Curtin 2014; Hillebrandt et al. 2014; Hillebrandt and Novak 2016). The Council is a strange in-stitution insofar as it acts as a legislative body within the structures of the EU and yet comprises members who, in their ministerial day jobs, are part of their national executive branch of government. Although the Council provides a highly institu-tionalized and structured venue for member states to interact, those same interac-tions are still *international* and quasi-diplomatic in a way that might help explain their greater secrecy.

It is significant that the conciliation and trilogue processes in the OLP, which bring together representatives of the Commission, the EP, and the Council, also take place behind closed doors. This is because it is easier to reach an agreement on controversial issues if the negotiations take place largely in private. The European Ombudsman (2016), however, criticized the lack of transparency of the trilogue process and, since that decision, the Parliament, Council, and Commission have worked to try and improve the situation. Further improvements, especially around public access to documents, could, however, still be made, and in 2018 the General Court of the EU (in *De Capitani v. European Parliament*, Case T-540/15) clarified that the Parliament must, in principle, grant access to documents relating to ongoing trilogues because they constitute 'a decisive stage in the legislative process'.

5.4.2 Is the process efficient?

Assessing the efficiency of the EU's legislative process has both quantitative and qualitative dimensions. It is relatively easy to produce figures on the number of legislative acts adopted each year, the stage in the process at which they are adopted and the average length of time required to adopt them (Tables 5.2 and 5.3). Undertaking a qualitative assessment, however, is a more difficult exercise, because of the value judgements it is likely to contain about the process as a whole and the content of the output.

Quantitatively, the output of the OLP compares favourably to the output of many national systems (an average of 90 legislative acts adopted annually since 2000), though much of that is technical legislation, which, in a national context, would normally be left to the executive to deal with through secondary (or subordinate) legislation. EU legislative output follows a certain rhythm, which is linked to both the EP's legislative term and the five-year life of each Commission. There are good reasons for this rhythm. A newly elected EP takes time to get itself organized—to

TABLE 5.2 Stage of adoption of acts by legislative term, 1999–2019

Legislative period	Concluded at 1st reading (%)	Concluded at 2nd reading (%)	Concluded after conciliation (3rd reading (%)	No agreement after conciliation (%)	Total
1999–2004 (5th EP)	146 (34.5)	187 (44.2)	88 (20.8)	2 (0.5) (Takeovers & Port services directives)	423
2004–9 (6th EP)	391 (78.8)	80 (16.1)	24 (4.9)	1 (0.2) (Working time directive)	496
2009–14 (7th EP)	408 (86.3)	55 (11.6)	9 (1.9)	1 (0.2) (Novel foods regulation)	473
2014–19 (8th EP)	359 (88.6)	46 (11.3)	0 (0)	0 (0)	405
Total	1304 (72.6)	368 (20.5)	121 (6.7)	4 (0.2)	1,797

Source: Council of the European Union (2021) 'Ordinary Legislative Procedure: Files concluded since the entry into force of the Treaty of Amsterdam' available at: https://www.consilium.europa. eu/media/48388/21-02-08-general-overview.pdf

decide on the composition and leadership of the committees and other organizational bodies, to agree on the appointment of *rapporteurs* for specific dossiers, and generally to get into a sustained tempo of work. Similarly, a newly appointed Commission must establish its priorities in legislative terms and either continue or set in train a series of consultations and drafting exercises in order to produce proposals for legislative acts. Steering a legislative proposal through the various stages of the decision-making process in each of the institutions takes time. It also requires large amounts of coordination and communication at various levels both within and between the institutions.

As a result, the legislative output of the first year or so of the life of a new Parliament and Commission tends to be rather sparse. In contrast, the final year or 18 months of the legislative term sees a sustained effort to get as many procedures concluded as possible, if only because of uncertainty about their eventual fate in a new, unknown configuration after the next elections. This political reality explains the increased number of completed dossiers in the six months prior to the end of each legislative assembly's term.

TABLE 5.3 Average length of time required to reach agreement under the OLP in months

	1999–2004 (5th EP)	2004–9 (6th EP)	2009–14 (7th EP)	2014–19 (8th EP)
1st reading	11	16	17	18
2nd reading	24	29	32	40
3rd reading (conciliation)	31	43	29	N/A*
Total average length	22	21	19	20

Note: * The eighth EP was the first without any conciliations.
Source: *EP Activity Report on Codecision and Conciliation, 14 July 2009–30 June 2014*, at: http:// www.europarl.europa.eu/code/about/activity_reports_en.htm and *EP Activity Report on Developments and Trends of the Ordinary Legislative Procedure, 1 July 2014–1 July 2019*, at: https://www. europarl.europa.eu/cmsdata/198024/activity-report-2014-2019_en.pdf

Similarly, each Council presidency period is marked by the conclusion of procedures or, at least, agreement on its stance on a particular dossier. Normally, both of these reach a peak in the last month of the presidency's six-month term of office, as the holder tries to wrap up as many agreements as possible—seen as a hallmark of 'a good presidency'.

The procedural stage at which the final decision is reached between the Council and the Parliament is another means often used to assess the efficiency of the EU's legislative process. Since the introduction of co-decision/OLP, there has been a steady increase in the number of dossiers agreed at an early stage in the process. The 2014–19 term confirmed that early stage agreements (at first or second reading) have become the norm. At the same time, there has been a corresponding decrease in the number of issues that have been subject to conciliation. The 2014–19 term was the first ever without any conciliations. At face value, this suggests that the EU institutions are working well together to coordinate their positions in order to reach agreement without having to resort to additional readings.

It now takes an average of 20 months to reach agreement on dossiers adopted under the OLP. The general desire to avoid extra readings where possible means that even difficult dossiers are now being agreed earlier in the process, thereby accounting for the increase in the average amount of time required for first and second reading agreements since 1999–2004 (Table 5.3). However, it should be remembered that, while strict time limits apply to the second reading and conciliation (third reading) phases of the procedure, no such limits apply to the first reading. It is therefore possible for either the EP or the Council to continue their internal first reading discussions on the dossier indefinitely, with no legal or administrative consequences (apart perhaps from the irritation of those actors wanting a rapid outcome to the deliberations). More positively, the lack of a set time limit for the first reading gives the actors the opportunity to iron out difficulties and explore

alternative solutions, which could facilitate interinstitutional agreement at the end of the first reading. Taking a long time to reach an agreement may also be an indicator of the complexity of the dossier, or of the initial distance between the positions of the various actors, which takes time to resolve. Time is often a valuable resource in all senses in EU policy-making.

The qualitative aspects of the legislative procedure are more difficult to measure. The fact that so many diverse actors and administrations have poured over legislative proposals—far more than is usually the case for national legislation—might augur well for its quality. However, the need for a very high level of support to get anything through the system might mean agreements tending towards the lowest common denominator (though not as much as under EU procedures where unanimity is required in the Council). Once something is adopted, it can become entrenched in that similarly high thresholds are needed to change or repeal it. In that sense, the EU can be quite susceptible to path dependency both in terms of policy and process. A regularly voiced criticism of EU policy is that a 'one-size-fits-all' approach across 27 diverse member states can lead to policies that are not sufficiently adapted to national circumstances (although often such criticisms can be a cover for those who are simply opposed to legislating or regulating in a certain policy area). Such criticisms make the principle of subsidiarity—and the distinction between regulations and directives—even more important to the workings of the EU. A 'one-size-fits-all' approach can be replaced, in policy areas where a group of member states, but not all, wish to pursue integration. The **Enhanced Cooperation** procedure was introduced in the Treaty of Amsterdam to allow member states to move at different speeds and towards different policy goals (Box 5.6).

BOX 5.6   Spotlight on: Enhanced cooperation

Enhanced cooperation is a procedure allowing a group of at least nine member states to set up advanced cooperation or pursue deeper integration in a particular policy area. Given that it creates areas of policy where only some member states pursue integration, the procedure facilitates the creation of a multi-speed and differentiated EU. It has been used in divorce law (17 participating member states), patents (25 states), and by 22 member states to establish a European Public Prosecutor's Office. In 2013, 11 member states attempted to use the procedure to create a financial transactions tax (although this was reduced to 10 in 2016 when Estonia withdrew its support for the policy). Progress on this front was slow and a number of member states—notably France, Italy, and Spain—introduced their own financial transaction taxes nationally. A report commissioned by the European Parliament (2018) explores the history of attempts at differentiated integration and the workings of enhanced cooperation (see also Kroll and Leuffen 2015).

A fascinating, and ongoing, point of debate is the extent to which a seemingly never-ending period of 'crisis' is changing how the EU works, including how it makes policy (Riddervold et al. 2021). Some have suggested that EU policy-making has gone through a process of 'crisisification' (Rhinard 2019), arguing that a series of crises have affected EU policy-making in a way that prioritizes the early identification of policy challenges and often abbreviated mechanisms of decision-making. The question of whether seemingly perpetual crisis will fundamentally alter the way the EU makes policy remains an open one.

5.5 Theory and Practice

As this chapter has demonstrated, the EU policy-making process is a complex negotiation between networks of actors, including formal players within EU structures, and a range of outside actors seeking policy influence. The regional integration theories presented in section 1.2—neofunctionalism, intergovernmentalism, and postfunctionalism—were designed less to explore the day-to-day policy activity of the EU, and more to engage with broader questions, such as who or what drives the process of European integration. Their strength is in helping us to understand how big issues get on to the policy agenda, and how broad directions of travel are set by the interaction of the EU's key institutional actors.

The various theories of institutionalism are well attuned to the more specific study of policy-making in a setting like the EU. Although a variety of distinct theories are found under this umbrella, institutionalists are unified by their interest in how the rules of the game—formal and informal—shape public policy. Historical institutionalists, for example, pay close attention to the way institutions and policies are originally set up. They use the concept of path dependency to demonstrate how agreed ways of working can create stability and continuity as actors become accustomed to doing things a certain way, recreating practices over time. Similarly, policies, once established, can become difficult to change as various actors accept them, adjust to them, and find ways of working with them. The approach sees institutions—and institutionalized ways of working—as forces of stability and continuity. More significant changes can occur at critical junctures, often triggered by a crisis or a visible and undeniable policy failure. In-between these critical junctures institutions and policies tend to change only incrementally, if at all (for example, Verdun 2015).

Institutionalists who adopt a more constructivist (section 1.2.4) outlook can shed considerable light on EU policy-making. They find no shortage of evidence that the preferences—even the *interests*—of policy-makers are constructed in the course of bargaining at the EU level, as opposed to being defined and fixed prior to negotiations in Brussels. Using the example of policy-making in the aftermath of the Eurozone crisis as an example, Schmidt (2014) explored the importance and power of ideas and how a process of dialogue and argument helped change the preferences of policy-makers in member states and within key EU institutions. The relentless search for compromise and consensus means that even when, say, a member state brings a strong position fixed in their national capital to EU negotiations, it almost inevitably is shaped and 'bent' in ways that make it possible to attract allies to adopt or block a policy decision.

Beyond institutionalism, scholars of public policy analysis—a distinct and ever-expanding subfield of political science—have developed an extensive toolbox of theories and concepts, most of which have been applied to EU policy-making (section 1.2.5). A central insight of this research is that there is not a single EU policy system. Given that the world of public policy is highly specialized, there are countless subsystems organized by policy area, for example, a health policy subsystem, a transport policy subsystem, and so on. Much of the work of developing policy takes place in policy networks made up of the relevant officials from EU institutions and member state governments. However, it also includes non-governmental actors such as researchers, businesses, trades unions, and various civic society actors. These subsystems can often be stable over long periods of time, creating policy continuity or inertia. Rival groups—or coalitions—of actors compete with each other to get their ideas and preferences on to the policy agenda. They do this in a variety of ways, including trying to frame problems in a way that makes their solutions attractive to policy-makers and competing to shape broader policy narratives and political discourse (see Pollack 2020).

5.6 Conclusion

This chapter has explored the formal rules of the OLP, but also described how formal actors—the members of the EU's institutions—operate alongside and in close collaboration with a host of other participants drawn from a wide range of sectors of civil society (Box 5.1). The formal stages of the legislative process have been adapted to operate alongside other informal processes that can and do affect policy outcomes. There is no denying that the EU's policy-making process is complex. We have seen how a very large number of official actors are involved at every stage of the process, operating in diverse forums, using a variety of languages and following complicated procedures. Their proceedings are monitored closely by a growing number of representatives of European civil society. Its members do their best, both publicly and behind the scenes, to have their interests considered when legislation affecting them is being prepared. A large European and international media corps publicizes and comments on the process. Each of the EU's institutions maintains a website with information on its activities in all the policy areas in which it is involved.

There is therefore no lack of information about what is going on in the EU. Equally, there is no denying a lack of understanding about how the process actually operates in practice. Compromise and consensus are the key features of the process. In order to reach agreement at EU level, bargains must be struck not only between but also within the institutions in an ongoing process of negotiation. Some of these negotiations are played out in public, but the most difficult and sensitive discussions continue to take place behind closed doors. The most visible stages of the decision-making process are only one small part of a long and complex series of exchanges that are open to input from a much greater variety of actors, including ordinary citizens, than is immediately apparent. The process is still not as democratic or as transparent as many would like. But it continues to function and to produce legislation that affects a growing number of aspects of the daily lives of ordinary citizens in Europe and beyond.

DISCUSSION QUESTIONS

1. What are the most important differences between the formal rules for EU policy-making and more informal norms that have emerged over time?

2. How do we explain the fact that the Council rarely takes a formal vote on proposed policy measures?

3. Does the increasing involvement of outside interests in the EU's decision-making process make for better policy?

4. Is democracy strengthened or undermined by the presence of non-elected interest groups in the EU decision-making process?

FURTHER READING

The most comprehensive single text about policy-making in the EU is Wallace et al. (2020). Burns et al. (2013) reflected on (then) 20 years of the OLP. Kluver et al. (2015) explore interest representation in Brussels and Bradsma et al. (2021) explore the trilogue process. There is a very wide literature on lobbying in the EU, with Greenwood (2017) the most up-to-date general text. Van Schendelen (2013) is very readable and applies the work of Machiavelli to Brussels lobbying. Cairney (2019) is the most accessible introduction to the theoretical literature on public policy, much of which is regularly applied to the EU in the *Journal of European Public Policy* (JEPP).

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CHAPTER 6

Democracy in the EU

Richard Corbett and Daniel Kenealy

Summary

With so many decisions taken at EU level, what are the implications for democracy? All member states have to be democratic as a condition for membership. But when taking collective decisions through European institutions, the individual choices available to national democracies are naturally constrained. This chapter explores some of the literature on democracy in the EU. To what extent do democratic procedures at the European level compensate for this narrowing of choices at national level? Is there a 'democratic deficit'? How can we understand democracy beyond the state? The chapter goes on to consider the importance of fundamental rights, values, and the rule of law in the EU and the extent to which developments in several member states—in particular, Hungary and Poland—represent a threat to the EU's democratic credentials.

6.1 Introduction: Democracy beyond the State?

Economic, environmental, and other forms of interdependence mean that national authorities alone cannot adequately deal with a growing number of problems. Many require concerted international action at various levels. But traditional methods of international cooperation are slow, cumbersome, and frequently opaque. They involve negotiations among ministers (and, in practice, mainly officials) representing their state. In most cases, nothing can be agreed between states without consensus. Consensus can be a good thing in policy-making as it reduces tensions between political actors and lowers the risk of policy being forced upon reluctant states and citizens. However, consensus can lead to inertia and slower policy-making. It also creates a bias towards less ambitious outputs—policy solutions often become a function of what the most reluctant or anti-reforming state will accept (lowest common denominator agreements).

When an agreement *is* reached, it is (perhaps) submitted as a *fait accompli* to national parliaments on a take-it-or-leave-it basis. The quality of democracy on such issues is low and—by often failing to tackle policy problems because of the problem of the lowest common denominator phenomenon—this can raise broader questions of legitimacy and efficiency. Such are the working methods of the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, the UN (including on climate change), NATO, regular summits such as the Groups of 7 or 20 (G7 and G20), and countless other international organizations and inter-governmental fora.

The EU purports to be different. It is not (always) hostage to the lowest common denominator. The EU has an elected Parliament, directly representing its citizens and bringing into the process representatives of both governing and opposition parties in each country. Decisions on legislation are taken in public. It also has an independent executive, the European Commission, headed by commissioners who are politically accountable to the Parliament. It has a common Court to ensure uniform interpretation of what has been agreed. It has safeguards to ensure that it respects fundamental rights. And it has more developed mechanisms than any other international organization for informing, and sometimes involving, national parliaments. On the basis of its decision-making procedures, can we therefore say that 'the EU not only forms a Union of sovereign democratic states, but also constitutes a democracy of its own' (Hoeksma 2010)? Can democracy work at all on an international basis?

6.1.1 *Demos,* democracy, and the democratic deficit

Some argue that democracy can only work when there is a *demos* (Box 6.1), that is, a common feeling of belonging to the same community. A *demos* is usually based on speaking the same language, and having a shared past, as well as similar expectations about behaviour and common values. Others argue that this view of

> **BOX 6.1** Key concepts and terms
>
> **Accountability** is a fundamental concept in representative democracy—elected politicians are accountable to citizens for their actions and decisions through periodic elections. In-between elections governments (executives) are accountable to parliament for the powers they use, the laws they pass, and their conduct in office. Courts and various agencies also play a role in holding governments to account, ensuring the actions of government are within the law.
>
> **Bicameralism** is from Latin *bi*, two + *camera*, chamber. This is when a legislature comprises two chambers, usually chosen by different methods or electoral systems.
>
> **Charter of Fundamental Rights of the European Union**: the EU has its own Charter of Rights that binds the EU institutions, and with which EU law must comply. Adopted initially as a political declaration by the EU institutions in 2000, it was given treaty status by the Treaty of Lisbon. It obliges EU institutions to respect the rights contained in the ECHR and others.
>
> **Democratic deficit** is a term used in multiple ways. Its narrowest definition suggests that EU institutions and decision-making processes are insufficiently democratic. Broader definitions concern the relationship between an increasingly powerful and visible EU and what some see as its missing *demos*.
>
> **Demos** ('the people') is a root word of democracy, the other being *kratos* ('power'). In ancient Greece, *demos* referred to the ruling body of free citizens in Athens who felt a sense of loyalty and attachment to Athens as a political community.
>
> **European Convention on Human Rights (ECHR)** is completely separate from the EU and its CJEU. It is an international treaty drafted in 1950 by the then newly formed **Council of Europe (CoE)**. All (the now 47) CoE member states are party to the Convention. Any person who feels his or her rights, as defined in the Charter, have been violated by a state can appeal to the **European Court of Human Rights**. Judgments finding violations are binding on the state(s) concerned.

democracy is tribalist and point out that if speaking a common language is a requirement, then Switzerland, India, Canada, South Africa, and many others cannot be categorized as democratic. Some argue that the EU lacks a *demos*—although each member state could be said to have one—and that, absent a *demos*, there can be no democracy.

Others contend that thinking in binary terms about whether the EU has a *demos* or not overlooks the nature of the EU. Nicolaïdis (2003) developed the concept of *demoi*-cracy, 'demoi' being a plural and representing the idea that the EU is a 'Union of multiple peoples'. The EU is seen as a polity that was created by states 'to govern together, but not as one' (Nicolaidis 2013: 351). The ethos of a *demoi*-cracy is rooted in two ideas—the non-domination and mutual recognition of the *demoi*. While this may sound abstract, many of the concrete ways in which the EU works in practice reflect *demoi*-cratic principles. For example, the preference for mutual recognition

of standards rather than uniformity, the principle of subsidiarity (see section 5.2.1) in the EU treaties, and an institutional set-up that rejects majoritarianism in favour of cooperation, consensus, and shared/diffuse leadership.

Following the logic of *demoi*-cracy, the EU's democratic legitimacy will be at risk when conflicts between member states lead to the breakdown of mutual recognition and the domination of some *demoi* by others. Conflicts between EU member states regarding how to respond to the Eurozone crisis or the refugee crisis are prominent examples of this threat. The attempt to forge greater political unity in response to a crisis—especially if that means some *demoi* imposing unity on others against their wishes—risks sacrificing the EU's democratic legitimacy by eroding the mutual recognition between *demoi* (Bellamy 2013).

A third perspective suggests that, in fact, the EU does possess a *demos*. Eurobarometer data confirms that a majority of the EU's citizens have developed a dual identity—their national identity co-exists with a sense of (admittedly weaker or secondary) European identity. Risse (2014: 1207) contends that this 'Europeanization of national identities is sufficient to sustain carefully crafted (re)-distributive policies on the European level'. Writing shortly after the most heated phase of the Eurozone crisis, Risse saw the 'politicization of national public spheres' as an opportunity for—as opposed to a threat to—the EU. It was up to the EU's leaders to 'fight for their visions and try to persuade sceptical publics', taking on the challenge of eurosceptic parties in order to build European identity and strengthen the EU's nascent *demos*. Weiler (1995)—in a classic text on the

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BOX 6.2 Spotlight on: Democracy, values, and the treaties

A commitment to liberal democracy is prominent in the treaties.

- Preamble: the signatories confirm 'their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law';
- Article 2 TEU: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities';
- Article 7 TEU details the procedure for dealing with 'a serious breach' of the 'values referred to in Article 2' and empowers the European Council to 'suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council'.
- Article 10 TEU states that 'the functioning of the Union shall be founded on representative democracy'.

The EU's **Charter of Fundamental Rights** obliges EU institutions to respect the rights contained in the **ECHR** (see Box 6.1). Finally, the Copenhagen Criteria require candidate countries to meet various democratic standards including provisions about the rule of law, human rights, and respect for and protection of minorities (see Box 9.2).

BOX 6.3 Spotlight on: Legitimacy

Legitimacy refers to the right to rule and make political decisions and the notion that 'the existing political institutions are the most appropriate ones for society' (Lipset 1963: 64). Legitimate political and governing systems are underpinned by shared moral principles and are accepted by citizens even when they disagree with, or dislike, *specific* outcomes or decisions. Legitimacy is important because the greater the legitimacy of a given system, the more resilient it is to short-term shifts of public opinion that might be driven by specific controversies or crises. Lord and Magnette (2004) identified four different ways that the EU's institutions could be evaluated as legitimate:

- **Indirect legitimacy**: the EU's legitimacy derives from the legitimacy of the member states that created and control it—this resonates with an intergovernmental view of the EU;
- **Technocratic legitimacy**: the EU's legitimacy derives from its capacity to solve policy problems and improve the welfare of its citizens—this resonates with a neofunctionalist view of the EU;
- **Parliamentary (or representative) legitimacy**: the EU's legitimacy is rooted in an elected EP and elected member state governments in the Council working together to make law and policy;
- **Procedural legitimacy**: the EU's legitimacy is enhanced when it follows due process, works transparently, engages in consultation when making policy, acts proportionally, and protects mutually recognized rights and values.

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subject—saw a European civic, value-driven *demos* existing side by side with a national organic-cultural one.

Debates around 'demos' and decision-making will continue, but most agree that, as some decisions *are* taken at European level, this should be done in as transparent, accountable, and democratic a way as possible. The loss of democratic **accountability** (Box 6.1) that occurs when national parliaments transfer their right to legislate to ministers meeting in the Council (of ministers) was one of the initial triggers of claims that the EU suffered a **'democratic deficit'** (Box 6.1—see Weiler 1995; Zweifel 2002). The continual strengthening of the EP's role in the EU legislative process was in large part designed to respond to charges of a 'democratic deficit'.

Some of the earliest academic responses to the 'democratic deficit' thesis were to deny that it was in fact a problem. One early critic was Moravcsik (2002) who, from his intergovernmental perspective, argued that the EU was an organization of democratic states (see Box 6.2) and that it was therefore *indirectly* democratic. Talk of a European *demos* was, for Moravcsik, somewhat beside the point. Majone (1998) developed a second line of argument that also played down the idea of a 'democratic deficit', one grounded in the output of EU policy and its efficiency (see Crombez 2003). Majone argued that **legitimacy** (Box 6.3)—even in a democracy—can be attained through the effective performance of tasks and functions that raise efficiency, increase welfare, and that would be difficult (or even impossible) to accomplish without the relevant governance or institutional arrangements. In national

democratic systems there are numerous powerful institutions that we accept as part of our governing arrangements—and that are not democratic in a narrowly defined way (i.e. they are not elected)—but rather possess a *technocratic* legitimacy.

The term democratic deficit began to take on a less precise meaning, often linked to the distance between EU institutions and voters and broader questions about the EU's legitimacy. As EU institutions gained more powers, especially in areas that might be considered 'core state powers'—and as the 'permissive consensus' gave way to a 'constraining dissensus' (Hooghe and Marks 2009)—Majone changed his view to one of concern about not merely a deficit but the potential for 'democratic default' (Majone 2014). This shift in opinion was driven by his belief that the EU's competences had expanded to a point that was not appropriately matched by its democratic credentials, thus raising deeper legitimacy questions. The Eurozone crisis—and what Majone saw as the power of the EU to shape fundamental economic policies in controversial ways—contributed to his change of opinion (also see Scharpf 2015).

6.2 Separation of Powers and Executive Accountability

Most democracies operate on the basis of a separation of powers, although the actual separation of the legislative, executive, and judicial functions is not always clear. Indeed, many democracies point to 'sharing' of powers across institutions, with checks and balances, rather than a separation of powers (Neustadt 1991). In particular, the executive and the legislative functions have tended to merge in most European democratic systems (although they remain more distinct in presidential systems, notably in the Americas). Some European countries blur this distinction completely. The UK and Ireland, for instance, actually require executive members of the government to be simultaneously members of the legislature (even if this sometimes just means appointment to the UK House of Lords or the Irish Senate). By contrast, in France, a parliamentarian who becomes a minister must resign their seat for the duration of their ministerial mandate. Either way, it is the norm in most European countries for the executive to have a majority in Parliament, which, through the party system and other mechanisms, is usually compliant with the wishes of the executive. The separation between these two branches thus becomes less than clear. Only the judicial function remains clearly separate.

In the EU, however, the separation between the executive and the legislature is more distinct. Recall that the European Commission is the EU's executive branch. Commissioners may not simultaneously be MEPs. In the EP, there is no compliant governing majority for the executive. Thus, in adopting any piece of legislation, a majority has to be built anew for each item through explanation, persuasion, and negotiation. The EP's role is thus more proactive than that of most national parliaments in Europe.

The EP is the most 'obviously' legislative institution in the EU but it forms only half of a bicameral (Box 6.1) legislature along with the Council, a body that occupies a more complex position in the conventional separation of powers typology (see section 5.2.3). In addition to being a co-legislator with the EP, the Council is also empowered to act as an executive in specific cases. When acting on macro-economic policy or foreign affairs, it is fulfilling an executive rather than a legislative function, albeit one that consists largely of coordinating national executives rather than constituting a European one.

The European Council does not directly act as either an executive or as a legislature (indeed, it is precluded from exercising a formal legislative role by the treaty). Yet it influences both. Formally, the European Council is a strategic body, charged with defining 'the general political directions and priorities' of the Union. Informally, as an institutionalized forum of the most powerful political figures of the member states and the Union, it is often called upon to settle thorny political questions that could be executive, legislative, or constitutional in nature, with its president playing a representational role, in addition to the central task of establishing and ensuring consensus. The European Council also nominates or appoints a number of key posts in the Union. For these reasons, it could be considered as a sort of collective 'head of state' of the Union, in that its political role is similar to that of heads of state in national semi-presidential systems.

Tracing the lines of accountability is thus complicated in the EU. The EP is the most straightforward to appraise, as MEPs are accountable to their citizens through European elections. For the main executive body (the Commission), a system close to what is found in most national contexts—that is, accountability to a parliament—has been established. The Council is responsible, collectively, to no one—though most legislative decisions it takes require EP approval—but each of its members is a member of a national government and thus is accountable to a national parliament (the same can be said for the European Council). Given that the Council's main 'executive' tasks are essentially about coordinating national policies, this member-state-based accountability may be considered appropriate. In any event, the Council must additionally justify itself in EP debates and answer parliamentary questions.

The CJEU is perhaps the institution that most easily slots into the conventional separation of powers framework. As the highest Court, the CJEU is composed of judges 'chosen from persons whose independence is beyond doubt' (Article 253 TFEU) who take an oath to 'perform their duties impartially and conscientiously'. The deliberations of the Court are secret, so individual judges cannot be pressurized about judgments. We never know how any judge voted on any case unless they reveal how they voted in their memoirs. Where the EU is once again different, however, is that judges are appointed neither by the EU's executive nor by its legislature, but rather are appointed for a (renewable) six-year term of office by the member states (one per member state).

This system differs from, for example, the US Supreme Court, whose justices are appointed for life by federal authorities (president and Senate), not by the states. The appointment of individual judges therefore depends more on the government of the member state from which they originate than on the composition of the EU

executive or legislature. As a result, any political considerations in their appointment are rooted in domestic politics and are thus diffused across the 27 member states. The only common European element in the appointment procedure of the members of the ECJ was introduced in the Lisbon Treaty (Article 255 TFEU). Appointees are now scrutinized by a panel of six members chosen by the Council and one chosen by the EP. That seven-strong panel comprises former judges of the Court—or of national supreme courts—or eminent lawyers.

The Court has exercised an important independent function, ensuring that the EU's institutions respect the law. It has both struck down acts of the Union's political institutions and ruled against member states when they have failed to apply European law. Despite making controversial rulings, compliance with its rulings is high—a sign of the legitimacy of the institution (Saurugger and Terpan 2017). With the exception of a 2021 ruling by Poland's highest court (EURACTIV, 2021b), no member state has explicitly refused to respect its judgments.

Overall, the Union system is characterized by a separation, or sharing, of powers, which is at least as distinct as is the case in most of its member states. The EU is *sui generis* and it is to be expected that conventional frameworks about separation of powers, which anyway vary among national political systems, will have distinctive features when applied to the EU. As important as the separation of powers is the balance of interests between a Union of 27 member states, comprising 27 political communities, and the extra scrutiny inherent in every proposal being examined by those 27 communities.

6.3 Elected Representation

Alongside separation of powers and accountability, elected representation is a core aspect of any system that purports to be democratic. This section considers several issues in turn. It first outlines the dual representation system at the heart of the EU. Then, it explores the nature of EP elections and European political parties. It goes on to consider efforts to increase the role played by national parliaments in the EU's policy process before exploring efforts to link the appointment of the head of the executive (i.e. the president of the Commission) to the outcome of the EP elections.

6.3.1 Dual representation

The treaties identify the EU as a representative democracy (Article 10 TEU—see Box 6.2). When thinking about representation in the EU, it is important to note that it has two channels—what Lord and Magnette call 'dual legitimation' (2004: 185). The EU comprises both states and citizens (see section 1.1.1) and its institutional design incorporates both, the former in the Council and the latter in the EP. Such arrangements are not uncommon at the national level. Consider Germany (a federal state): the citizens of Germany directly elect the lower chamber of parliament (the *Bundestag*) and the upper chamber (the *Bundesrat*) is made up of delegations from the governments of the constituent states of the federation (the *Länder*).

The current system of QMV features a double majority based on one vote per state, alongside a second vote in which votes are weighted by population (see Box 3.3). Those votes must be cast as a bloc (they cannot be split), which is another feature that the Council shares with the German *Bundesrat* (see Table 6.1) Thus, the two traditional representational features found in bicameral federal systems—equality of states in one chamber and equality of citizens in the other—are both found in the Council.

Prior to 2014, QMV worked differently—a fixed number of votes were given to each member state, ranging from three for Malta to 29 for France, Germany, and Italy (and—then—the UK). It required roughly 74 per cent of the total votes allocated. However, successive EU enlargements, adding mostly small or-medium-sized member states, led to a situation where a qualified majority in the Council could represent only a minority of the EU's population. Larger member states felt they were becoming underrepresented, which is primarily why the system was reformed. The shift reflects the power asymmetries between larger and smaller member states but also goes to the heart of democratic legitimacy in replacing a system that could, in theory, have entrenched minority rule over the majority.

In the EP, representation is degressively proportional, slightly overrepresenting smaller states. Between them, the Parliament and Council can affirm (or not) the acceptability of proposed EU policy from the point of view of both a majority of member states *and* the majority of the EU's citizenry. The Parliament and Council perform these functions in the context of a consensual, rather than an adversarial, style of political system. High thresholds are needed, notably in the Council, to adopt any legislation, budget, or policy. Taken together, the EU system involves a greater number of representative channels than can be found anywhere else in the world above the level of the nation state.

TABLE 6.1 The Council and the German *Bundesrat*

	Council	Bundesrat
Composition	Ministers from member state governments; preparatory meetings by permanent representatives (ambassadors) of member states in Brussels	Ministers from state (*Länder*) governments; preparatory meetings by permanent representatives of states in Berlin
Voting	Each member state's vote weighted by size and cast as a bloc	Each state's (*Land*) vote weighted by size and cast as a bloc
Majorities required	Usually, threshold higher than simple majority (qualified majority or unanimity)	To disagree with *Bundestag*, threshold usually higher than simple majority (absolute majority)
Reconciliation with elected chamber	Conciliation Committee with EP	Conciliation Committee with *Bundestag*

As we saw in section 3.6, the EP does not merely rubber-stamp the executive's legislation. Nor is it subservient to the executive via a party-political whipping (management) system, as is common in parliamentary democracies where the executive emerges from a majority coalition in the legislature. From its original role as merely a consultative body of seconded national parliamentarians—with final decisions taken behind closed doors in the Council—the EP has grown into the role of co-legislator (see section 5.2.3). It also seems to be more appreciated by the electorate. According to Eurobarometer opinion polling, out-dated perceptions of it as a 'toothless tiger' have faded. Around half of EU citizens said they 'tend to trust' the EP in late 2019 / early 2020, considerably higher than average reported levels of trust in national governments (around 35 per cent).

6.3.2 European elections, European parties

One of the earliest debates about representation through the EP was about whether EP elections were anything more than 'second-order' elections—that is, elections that were primarily a proxy for voters to express their feelings about domestic politics. Given that EP elections frequently take place mid-term in most national political cycles, they often result in a larger share of the seats going to opposition parties and smaller parties than would be the case in most national elections. EP elections thus perhaps *can* be dismissed as little more than a protest vote, but the results matter: they elect a wide variety of parties and thus have the effect of balancing the Council, whose members come exclusively from governing parties. The EP thus enhances pluralism and ensures that EU decisions are not left exclusively to ministers, diplomats, and bureaucrats.

Turnout is a good place to start when engaging with the debate about the nature of EP elections. Turnout in the 2019 EP elections was 51 per cent, up from around 43 per cent in the previous two elections (in 2009 and 2014), or about the same as for mid-term US Congressional elections—and higher than most local and regional elections in EU member states. From one perspective, it is normal that turnout is lower than for national parliamentary elections because less is at stake. However, turnout fell consistency in each EP election from a high of 62 per cent in the first elections held in 1979. The 2019 result broke the trend. Declining participation is a challenge for democracy at all levels, not peculiar to the European level, even if the latter does have distinctive challenges. The phenomenon has led many to consider additional participatory forms of democracy (see Box 6.4).

BOX 6.4 Spotlight on: Participatory democracy in the EU

A more recent trend in democratic theory is the concept of participatory democracy (see Kohler-Koch 2012), meaning the creation of new mechanisms to facilitate the direct participation of citizens in democratic processes. The Lisbon Treaty added a new, direct source of policy proposals: one million EU citizens can now sign a **European Citizens' Initiative (ECI)** to invite the Commission to

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bring forward a legislative proposal (Greenwood 2013; Boussaguet 2016). While the Commission is not legally obliged to act (with only six such initiatives out of over 70 launched having reached the one million threshold), the route has led to legislative proposals concerning drinking water quality. The jury is out on whether the ECI heralds a new dimension in EU democracy, or whether it will merely entrench the power of already prominent NGOs and civic society organizations that know how to mobilize publics and work the EU policy system—remember, policy is politics, and politics is power (see section 5.3). The EU's most recent venture into the realm of participatory democracy is the **Conference on the Future of Europe** (see section 10.4.3).

Even on a low turnout, European elections do, at least, result in all the main strands of public opinion being represented in the EP.

A functioning system of political parties is typically considered a necessary requirement in a representative parliamentary democracy. In the EU context, pan-European political parties have emerged as federations of national parties—they are thus looser groupings than national political parties (see Box 6.5).

BOX 6.5 Spotlight on: European political parties

European political parties are cross-national and can reach beyond the EU. They are linked to but distinct from the political groups in the EP (see Table 3.1). Three existed before the first direct elections to the EP:

- the PES, comprising parties from the democratic socialist/labour tradition;
- the EPP, comprising Christian Democrats and other centre-right or conservative parties; and
- the ALDE, previously the European Liberal, Democratic and Reformist Party (ELDR), comprising a variety of liberal and allied parties.

Two more emerged between 1979 and 2004 (and MEPs from these two parties currently sit in the same group in the Parliament):

- the European Green Party;
- the EFA, comprising regionalist and nationalist parties such as the Scottish, Flemish, Basque, Corsican, Sardinian, Catalan, and Welsh nationalists.

A number of other (usually smaller) European political parties were created following the adoption of a system for financing such parties in 2004. Some on the right or far right have been through several configurations, and regroupings, as alliances have shifted, and some folded. Currently, the other parties are:

- the Party of the European Left (which includes a number of Communist or former Communist parties);
- the ECR (notably including (pre-Brexit) the UK Conservatives);
- ID (far right, eurosceptic);
- EDP (centrist);
- European Christian Political Movement (socially conservative)

The recognition and the development of these parties have been incremental. The Maastricht Treaty introduced an article referring to the importance of European political parties (Article 10 TEU). Later, parties themselves were granted legal personality and, crucially, access to funding provided certain conditions are met, such as being represented in a sufficient number of member states (at least one-quarter) and respecting the principles of the EU (such as liberty, human rights, and so on), although they do not have to support the existence of the EU itself. Parties also must publish their accounts and have them independently audited, as well as publish the names of any donors contributing more than €1,500. Parties may not accept donations of more than €18,000 from any single donor, nor may they accept anonymous donations. Money provided from the EU budget for European parties may also not be passed on to national parties.

The main parties are also active in a growing number of areas. They organize regular congresses, composed of delegates from national parties. Their leaders can hold 'summits' with leaders of their national parties (often prior to European Council meetings). Parties can also adopt common manifestos for European elections, though in practice their decision-making tends to be by consensus among the national member parties, which in turn means that the content of their policies tends towards the lowest common denominator. They are generally unknown to the public, except in the broadest sense that—for the Socialists, Liberals, Greens, and Christian Democrats—national voters may be aware that they are part of a larger European grouping and that they work together in the EP. Only a sophisticated minority of voters will actually be aware of the common manifestos on which they stand in European elections. However, even without such awareness, their activities can lead to a degree of convergence around common policy positions.

In the EP, the vast majority of MEPs organize in political groups that are affiliated to—but distinct from—European parties (see Table 3.1). This makes sense given that the policy choices at stake when dealing with legislation are typically political choices—for example, higher environmental standards at greater cost to those regulated, or not? On these subjects, there are nearly always different views *within* each member state, irrespective of the position taken by their minister in the Council. MEPs are more likely to come together cross-nationally *because of* a shared political or ideological outlook than they are to come together nationally *in spite of* differing political or ideological outlooks.

Group cohesion, as measured by roll call votes, reaches very high levels—between 85 and 96 per cent in 2020 for all groups except the eurosceptic ECR and ID groups (see Table 3.1)—far higher than the cohesion measured by nationality. Cohesion varies across policy areas depending on how divisive an issue is. For example, the Progressive Alliance of Socialists and Democrats (S&D) group exhibits greater cohesion on issues concerning migration than international trade (VoteWatch 2020). Interestingly, enlargement did not significantly impact group cohesion, in part because acting cohesively, as a group, is important if MEPs want to have an impact on the EU's policy-making process. The EP lacks the strict whipping system found in national parliaments, but positions taken by the groups—and the negotiations between them—are what count in determining majorities. Although the principal cleavage in the EP is the classic left-wing/right-wing one, a secondary cleavage—between pro- and anti-integration MEPs—has grown in recent years (Otjes and van der Veer 2016). Anti-integration sentiment (euroscepticism—see Box 6.6) challenges the EU's legitimacy because it represents (in its purest form, or *hard euroscepticism*) a questioning of the EU's existence, or (in a diluted form, or *soft euroscepticism*) a desire to see the EU to do far less than it currently does.

BOX 6.6   What drives euroscepticism?

The phrase euroscepticism is a tricky to one to define (see Box 4.2) and levels of euroscepticism vary across the 27 member states (see section 4.2.3). Research on what drives euroscepticism can be organized into three perspectives, each identifying a different key driver (see Hobolt and de Vries 2016). The first emphasizes **self-interest**. People support the EU when they feel that their country and/or they personally benefit from it materially. A second strand of research explores the importance of **identity** in driving euroscepticism. If people feel a strong sense of national identity, and perceive European integration to challenge or conflict with national identity, they are more likely to develop eurosceptic attitudes. A third perspective suggests that, because the EU is quite remote from citizens, attitudes towards it are often a **proxy** for broader attitudes about politics and the quality of government at the national level. Trust in, and support for, national government can thus be correlated with trust in, and support for, the EU. According to this research, people's opinions of the EU are susceptible to being shaped by the national political actors—whether parties, leaders, or commentators—that they place the most trust in. Hooghe and Marks (2005) neatly capture the three perspectives with the heuristic **calculation**, **community**, and **cues**.

Despite the cohesion of the groups, national allegiances and political influences are not entirely absent. MEPs are elected in national or regional constituencies and are nominated as candidates by national political parties. Their actions are refracted through the lens of national media. There are moments—for example, in the run-up to national or European elections—when national cleavages are more likely to trump the ideological splits (Koop et al. 2018). This reminds us that, again, the EU is perpetually divided between the vertical divisions of national politics and the horizontal divisions of ideology, which represents an ongoing (creative) tension in the democratic fabric of the Union.

6.3.3 The role of national parliaments

Recent years have seen attempts to strengthen the role of *national parliaments* in scrutinizing the participation of their government in EU institutions. In certain cases, national parliaments may intervene directly, independently of their national

government. The treaty lists a number of ways in which national parliaments 'contribute actively to the good functioning of the Union' (Article 12 TEU). One notable innovation in the Lisbon Treaty is a Protocol 'on the Application of the Principles of Subsidiarity and Proportionality'. The Protocol contains a procedure whereby national parliaments, within eight weeks of receiving a legislative proposal, can send a reasoned opinion back to the EU institutions stating why they consider the draft proposal to not comply with the principle of subsidiarity.

If such reasoned opinions come from enough national parliaments (roughly one-third), then the Commission must review the draft, and subsequently justify its decision to maintain, amend, or withdraw its proposal. Employing a football analogy, this procedure is known as the *yellow card*. Alternatively, if such reasoned opinions come from more than half of the national parliaments in the EU, then a special vote must take place in the Council and in the EP—by a simple majority in the EP or by a majority of 55 per cent of the members of the Council—either of which can immediately kill off the proposal. This is known as the *orange card* procedure, as it was proposed by the Dutch (whose football team wears orange), and is not quite a red card.

These procedures are an important safeguard to prevent the overcentralization of powers, even if they are rarely needed: in the first ten years of operation of the procedures, only three proposals triggered a yellow card—a regulation about strike action (2012), the proposal to establish the European Public Prosecutor's Office (2013), and a proposal to review a regulation governing workers who, for a limited period, work in an EU (or European Economic Area; EEA) state other than the one they normally work in (2016). Only in the first example did the Commission withdraw its proposal, and even then only because it was unlikely to gather the necessary political support to pass. None, to date, have triggered an orange card. Respect of subsidiarity appears not to be a frequent problem with Commission proposals.

Nevertheless, the very existence of these procedures means that more national parliaments are paying close attention to European legislation—and in practice to its substance—rather than just checking it against the benchmark of subsidiarity. More may start holding committee hearings of their country's minister before Council meetings, as is already standard practice in the Nordic countries, or send comments on the substance of proposals directly to the Commission (there are currently some 200 such submissions per year). In addition, national parliaments increasingly confer among themselves, exchanging documents through an electronic exchange system (Interparliamentary Exchange; IPEX), as well as meeting together at committee level or in interparliamentary conferences (see Neuhold and Hogenauer 2016).

National parliaments are also involved in the process of future treaty change. Unless the EP decides otherwise, any IGC to revise the treaty must be preceded by a Convention composed of members of national parliaments, the EP, the Commission, and a representative of each government. And, of course, in most member states, national parliaments must ultimately ratify such treaty changes.

The treaty provisions involving national parliaments are thus quite numerous. In truth, most national parliaments have little time to actively scrutinize the

fine-grained detail of EU issues (de Wilde and Raunio 2015). These new processes involve a deviation from their standard role (Sprungk 2013). Unlike the EP, most are in a classic government/opposition structure where governing majorities mean that there is, in practice, little scope to amend government texts or reverse their policies. National parliaments also have less time, expertise, and staff to devote to European matters than does the EP itself, which works full-time on EU affairs. National parliamentary procedures, practices, and timetables all diverge. Nonetheless, national parliaments can scrutinize and sometimes take part in EU decision-making to a degree that simply does not exist in other international organizations. In sum, the involvement in the adoption of legislation of both a dedicated EP and national parliaments means that the EU's credentials measured against this particular yardstick of democracy are substantial.

Although some have suggested that national parliaments have collectively become a 'virtual third chamber' in EU policy-making (Cooper 2012), concerns have been raised. National parliaments are fundamentally *national* institutions and encouraging networks and interactions between political elites that cross national borders could, potentially, entrench interests and alliances that jar with the interests of national publics (Puntscher-Riekmann and Wydra 2013). The EU's 27 national parliaments are also not equal in terms of their resource capacity and any process that seeks to bring national parliaments into the EU policy-making process risks exacerbating existing power asymmetries (Auel and Hoing 2014).

6.3.4 The rise (and fall?) of *Spitzenkandidaten*

The relationship between the outcome of European parliamentary elections and the composition of the executive is not as visible as it is in most European national parliamentary elections. However, the view that the Commission is 'unelected', unlike national governments, is overly simplistic. For example, British citizens do not directly elect the UK government: technically, the head of state (an unelected one at that) appoints a prime minister who appoints a government, which crucially relies on the confidence of the directly elected Members of Parliament in the House of Commons. Similarly, the Commission relies on the confidence of the EP; the EP itself has always had the right to dismiss the Commission. In the 1990s, the EP acquired the right to approve the appointment of the Commission, and indeed to elect its president. In fact, the EP took such votes even before such procedures were laid down formally in the treaties. The in-depth examination that candidate commissioners now receive from EP committees at hearings prior to their confirmation goes well beyond what ministers have to face in most European countries and for the last four Commissions has led to some candidates falling and being replaced (see Box 3.5).

Despite all this, few would consider the Commission to have an elected mandate. They might if the College of Commissioners were composed to reflect a majority coalition in the EP. Yet a Commission structured in this way is unlikely

to emerge: most governments want to nominate as the commissioner from their country a member of their own political 'family'. Again, this highlights the tensions in the EU—the Commission is supranational in essence but its College emerges from 27 national decision-making processes. The idea of the Commission being assembled like most national cabinets thus remains elusive—the link between the outcome of EP elections and the political balance of the EU's 'executive' is distorted by the national appointment of commissioners, even though the Commission president can now veto nominations and decides on the portfolios that Commissioners get.

What *has* begun to change is that the vote on the president of the Commission is becoming more political and linked to the outcome of EP elections. This represents an attempt to establish a way of selecting the head of the executive that is linked to a democratic act (an EP election), rather than backroom bargaining among the leaders of the member states. That choice is increasingly important, as the president's pre-eminence within the Commission has grown over time. The change to the treaties brought in by Lisbon refers to the 'election' of the president of the Commission by the EP. This vote is, as before, on a proposal of the European Council, but the latter must now take into account the results of the European elections in making its nomination (Article 17 TEU). This provision potentially makes the nomination similar to that of a head of state choosing a candidate prime minister who is capable of enjoying a parliamentary majority (see Box 6.7).

BOX 6.7 Appointing prime ministers: There's no single way to do it

Commission president: elected by the EP by an absolute majority on a proposal of the European Council, which must take account of the results of European parliamentary elections.

German chancellor: elected by the *Bundestag* by an absolute majority on a proposal of the Federal president.

UK prime minister: appointed by the Queen in light of advice as to who can secure a parliamentary majority in the lower chamber (House of Commons), but with no formal vote in parliament.

US president: chosen by an electoral college, whose members are elected in each state, normally as a function of which presidential candidate they support.

French prime minister: chosen by the directly elected president, without requiring a vote by parliament. However, the lower chamber (*Assemblée*) may dismiss the government by an absolute majority.

Swiss government: college of seven (with annual rotation of the president among them), elected by the two chambers of the parliament (and comprising members of all major parties).

Swedish prime minister: nominated by the speaker of the parliament and serves unless opposed by an absolute majority of (single chamber) parliament.

Italian prime minister: nominated by the president whose cabinet then requires approval by both chambers of the parliament (simple majority).

As a result, European political parties have started nominating their candidates for Commission president ahead of European elections. In 2014, the five main European political parties selected a *Spitzenkandidat* (a German word that means 'lead candidate') in an attempt to have their candidate named as Commission president. They argued that this could improve the transparency of the process and create a clear link between voting in EP elections and the selection of the Commission president, thus giving the post some form of democratic legitimacy. Televised debates were held between these candidates ahead of the elections (Dinan 2015). However, the process was controversial. The eurosceptic ECR Party refused to nominate a *Spitzenkandidat*, seeing the process as furthering and potentially legitimizing a more supranational—even quasi-federal—form of EU governance.

Despite heralding a form of pan-European political campaign (see Garcia and Priestley 2015), the process had 'a limited impact on voter participation and voter choices' (Hobolt 2014). Public attention generated by the process varied from country to country. Nonetheless, despite some misgivings from some of its members, the European Council proceeded to nominate the candidate of the largest party, Jean-Claude Juncker, who was duly elected by the EP (Christiansen 2016). The UK Prime Minister David Cameron strongly opposed this development and was joined by Hungary's Prime Minister, Victor Orban, in voting against Juncker—the first case ever of a Commission president being nominated via a qualified majority vote in the European Council (Peterson 2017b).

In 2019, all the main parties again nominated candidates for Commission president ahead of the elections. However, ultimately the presidency was given to the (then) German Defence Minister, Ursula von der Leyen, who had expressed no interest in the position previously, and was not a candidate. A complex process of negotiation and bargaining led to this outcome (see Box 6.8). Some felt that this sounded the death-knell of the *Spitzenkandidat* system. But the largest political parties said they remain committed to it and will again put forward their candidates for Commission president ahead of the next elections in 2024. After all, in national contexts as well, it is not always a pre-announced party candidate who becomes prime minister: sometimes it is a new compromise figure (for example, Italy after the 2018 election), but it is the exception that proves the rule.

BOX 6.8 How it really works: Picking a Commission president in 2019

There was good reason to predict that, following the 2019 EP elections, the Commission president would be appointed in the same manner as Juncker had been appointed (albeit not without controversy) in 2014. However, after the elections the European Council deadlocked on the decision. The EPP had won the most seats, but the PES had won more votes. The EPP candidate (Manfred Weber, leader of their Group in the EP) was seen as lacklustre and unable to secure a majority coalition. The PES candidate, Frans Timmermans, seemed more

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likely to get support from other parties who held the balance of seats. The most senior EPP head of government, Angela Merkel, at first accepted that it should be Timmermans, but a significant number of other EPP leaders did not follow her. Timmermans was also opposed by a number of governments from central Europe, unhappy about his criticisms of their policies on migration and on the rule of law.

After negotiations within the European Council that were explicitly on a party-to-party basis (the Croatian and Latvian prime ministers negotiated for the EPP, the Spanish and Portuguese prime ministers for the Socialists, and the Belgian and Dutch prime ministers for the Liberals), agreement was reached on a compromise candidate for Commission president, the German Defence Minister Ursula von der Leyen (as a German Christian Democrat this meant the presidency ultimately going to the EPP). The Socialists were compensated with Timmermans becoming First Vice-President of the Commission—able to choose his own portfolio—and Josep Borrell becoming the High Representative. The Liberal Charles Michel became President of the European Council.

The *Spitzenkandidat* process sheds considerable light on various aspects of the EU, in particular the tensions between supranationalism and intergovernmentalism. Juncker himself has called the process 'not very transparent'. Many heads of state and government did not truly embrace the process in 2014—they saw it as an incursion onto their turf but were distracted by other things and found it hard to argue against a candidate as experienced as Juncker. The process revealed a lot about how the leaders of the EU's various institutions seek to construct narratives and arguments that advance their position, and about different understandings of democratic legitimacy within the EU—should it come from the EU's citizens voting in the EP elections, from the elected governments of the member states deciding in the Council and European Council, or from the interaction and tension between both? Eurobarometer (2021: 77) has found that a clear majority of EU citizens support the *Spitzenkandidaten* process.

6.4 Fundamental Rights, Values, and the Rule of Law

Democracy is frequently defined as rule by the majority. But in modern times, it is increasingly seen as going hand-in-hand with respect for minorities and for the rights of individuals. Governments and even elected parliaments can be challenged in the courts should they fail to respect fundamental rights. This feature can also be found in the EU. Initially it was exercised via case law: the CJEU acknowledged that the Union had to respect the fundamental rights that are common to the constitutional traditions of the member states. The Court recognized that all member states had signed the ECHR (of the CoE—see Box 6.1) and that it should be a source of law for its own deliberations. From 1993, the Maastricht Treaty entrenched this case law in the treaty itself.

With the Lisbon Treaty, the Union obtained its own Charter of Fundamental Rights (see Box 6.1), intended both to make those rights already contained in the ECHR visibly applicable to the Union but also to complement them with a range of other rights. The Charter was framed in such a way as to be binding in the field of EU law, and as such is binding on both the EU institutions, and the member states when applying European law. This means that decisions or acts of the Union can be struck down by the Court should they fail to respect the rights contained in the Charter. Furthermore, the Lisbon Treaty provided for the Union itself to accede to the ECHR. Although this has not yet occurred, it will give plaintiffs the right to appeal to the European Court of Human Rights should they fail to gain satisfaction from the CJEU, much in the same way as in member states an appeal can be made against the final judgment of a national court. In other words, the EU's legal system will be subject to the same external yardstick as member states' legal systems. Thus, in relation to the formal criterion of respecting fundamental rights, the EU system and procedures measure up well.

Questions about fundamental rights, values, and the rule of law have become increasingly prominent within the EU in light of developments in several member states, most notably Hungary and Poland (Holesch and Kyriazi 2020). Often called 'democratic backsliding'—that is a gradual and deliberate process of de-democratization—it represents not just a policy challenge to the EU but also a potential existential crisis, calling into question the EU's internal normative coherence and its standing in the world as a promoter of democratic values. Kelemen (2017) has referred to this development as the EU's 'other democratic deficit'. But it is not just an EU (or European) phenomena, and a wider literature explores the decline of democracy in various parts of the world (Diamond and Plattner 2015).

Minimalist definitions of democracy focus narrowly on elections and competing political elites, but broader definitions take in key features that have become associated with modern liberal democracy, such as the absence of corruption, the strength of civic society, an independent press/media, the existence of independent courts to uphold the rule of law, the protection of minority rights, and so forth (Diamond 2008; Luhrmann et al. 2017). Furthermore, great care is needed to preserve the informal rules of the game that help to maintain democracies—such as honouring the spirit as well as the letter of the law, exercising power in a restrained way, and recognizing legitimate political rivals. The gradual erosion of such rules can herald the beginning of the death of democracy (see Ziblatt and Levitsky 2018).

The governments of Hungary and Poland have not suspended elections or banned opposition parties—things that would be unambiguously anti-democratic—but stand accused of 'enabling the erosion of key features that have become associated with modern liberal democracy' (Gora and de Wilde 2020). In 2010, after winning a two-thirds 'super'-majority of seats in the Hungarian parliament (on 53 per cent of the popular vote), Prime Minister Victor Orban and his Fidesz party set

about making changes to the constitution and the laws that curtailed the independence of the judiciary, the media, various sectors of the economy, NGOs and universities, and the electoral process, as well as changing parliamentary procedures, making it a less effective scrutinizer of his government. In 2015, after winning power in Poland, the right-wing-populist Law and Justice Party (PiS) moved to annul appointments to Poland's Constitutional Court and passed a law reducing the powers of that Court. In the years since, both governments have: filled the courts and media with pro-government appointees; actively tried to drive liberal NGOs, academics, and think tanks out of the country; and passed restrictive laws (in contravention of the EU Charter of Fundamental Rights) on abortion and gay and transgender rights.

As a result, Hungary and Poland have been characterized as 'semi-authoritarian regimes' (Dawson and Hanley 2016) and as 'hybrid regimes' that sit between democracy and autocracy (Krekó and Enyedi 2018), while Freedom House (2021) categorizes Hungary as only 'partly-free'—in large part because of changes to electoral laws that give an 'undue advantage' to the governing party (OSCE 2014: 3). Orban has styled his approach 'illiberal democracy', a fusion of words that German Chancellor Angela Merkel said she 'could not understand'. Juncker, when Commission President, greeted Orban at a 2015 summit in Riga with the words, 'Here comes the dictator.'

The EU has struggled to respond effectively to these developments. The Commission initially tried to tackle the problem through the standard method of infringement procedures—the EU attempted to deal with Orban's first media law as a failure to transpose a media directive appropriately (rather than as a rule of law issue), and with the Polish government's moves against judges as a violation of EU employment law (rather than as a rule of law issue). Combined with the application of softer forms of social pressure—naming and shaming, appealing to a shared sense of values (see Sedelmeier 2017)—these measures hindered but did not prevent the 'backsliding' in either Hungary or Poland.

The treaty has a mechanism to deal with such situations (Article 7 TEU—see Sadurski 2010). The Commission, the EP, or one-third of member states can ask the Council to determine whether a member state is at risk of seriously breaching the EU's values. The Council—acting by a four-fifths majority of its members and after obtaining the consent of the EP—is empowered to make that determination after hearing from the accused member state. However, determining the existence of a 'serious and persistent breach' of the EU's values is the job of the European Council acting by unanimity (except the member state accused), on a proposal from either one-third of member states or from the Commission, and after obtaining the EP's consent. If a member state is determined by the European Council to be in serious and persistent breach, the Council—acting by QMV—may decide to suspend certain rights of the member state, including voting rights in the Council.

The role of the European Council in this process—and the high thresholds involved—reflect both the 'high politics' nature of the issue and the desire by member states to guard themselves from such sanctions. The unanimity requirement means that a member state in breach of the EU's values needs just one ally to shield it. The first step of the Article 7 process—asking the Council to determine *whether* a risk of a serious breach exists—has been triggered against both Poland (by the Commission in December 2017) and Hungary (by the EP in September 2018). In Poland's case only 14 member states subsequently voted that Poland posed a 'clear risk' (four voted against and nine abstained).

In parallel to these developments, the Commission developed a *Rule of Law Framework* in 2014 to deal with 'systemic threats to the rule of law' in the EU but—lacking the power to impose sanctions—it is a toothless instrument. In March 2019, determined to find more effective leverage and mechanisms, the Commission won the EP's support for linking EU budget payments to the rule of law in member states. Several member states had already voiced their support for such a linkage, but Hungary and Poland threatened to veto the EU's 2021–7 Multi-annual Financial Framework (MFF) if it tied EU funding in such a way. An 'interpretive declaration' was agreed between the member states, referring the rule of law provisions in the MFF agreement to the CJEU before they can be applied. The attempt to sanction Hungary and Poland in this way is another example of the EU trying to deal with rule of law problems through instruments that are not explicitly designed for that purpose.

The EU's attempts to contain 'backsliding' have thus been found wanting. It is a fine political calculation about how strongly to challenge it, especially given that challenging it too strongly could risk member states leaving the EU, weakening it economically, and potentially gravitating into other spheres of influence (for example, Russia's or Turkey's). Conversely, if the EU is a Union of values and a Union of (liberal) democracies, then the presence of illiberal democracies and 'partly-free' states within it risks undermining the EU's identity and its normative power on the global stage (see section 8.5).

6.5 Conclusion

Questions about democracy in the EU are perennial. In a narrow sense they are evaluative questions about the democratic credentials of the EU's institutions (Chapter 3) and policy-making process (Chapter 5). In a broader sense they are normative questions about the relationship between an increasingly powerful and visible EU and what some see as its missing *demos*. The increased political visibility of the EU and the 'constraining dissensus' make these questions important for the EU's future. Numerous developments—from strengthening the EP to involving national parliaments more in the EU's workings, from the right to petition the EP to the ECI, from hearings with candidate Commissioners to *Spitzenkandidaten*—have attempted to bolster the EU's democratic legitimacy and its connection to its citizens. Challenged by developments in Hungary and Poland, the EU faces existential questions about how it ought to handle member states that do not uphold appropriate democratic standards.

We have seen that the EU system does fulfil fundamental democratic norms, but in a way that is more complex and less visible to the public than is the case at a national level. Like any political system, it has its own idiosyncrasies. Inevitably, its detailed functioning is different from what people are familiar with within their national system (which are themselves diverse). Those differences and complexities give rise to misunderstandings and can also be exploited by eurosceptic opponents. Nonetheless, the EU is unique in how far it goes to try to apply democratic principles at a level above the nation state. How successful it is remains open to debate. A study by Duina and Lenz (2017) concluded that the EU, at the very least, was one of the most democratically legitimate regional economic organizations. However, that simply reminds us that the EU is not *merely* a regional economic organization and questions remain about how to build new—and maintain existing—aspects of EU democracy.

? DISCUSSION QUESTIONS

1. How can democratic accountability be assured for those matters dealt with at a European level? Should it be via national parliaments scrutinizing their own government's negotiating position, or via the EP, or both?

2. Does the relatively low turnout in EP elections matter?

3. What are the main challenges to citizen involvement in EU politics?

4. Is the *Spitzenkandidaten* system a good development?

5. Are fundamental rights sufficiently protected at European level?

FURTHER READING

Weiler (1995) is a still classic exploration of *demos* in Europe, and Majone (2014) offers an interesting discussion of the 'democratic deficit'. Siedentop (2002) explores whether representative government in possible in the EU. Cheneval et al. (2015) is a collection of papers exploring the concept of *demoi*-cracy in the EU. Habermas (2008) is a discussion of how decisions about Europe's future can be put in the hands of its citizens. De Vries (2018) offers a comprehensive discussion of euroscepticism, and Schmidt (2020) considers whether the Eurozone crisis created a crisis of legitimacy. Kelemen (2020) discusses the recent authoritarian turn in some EU member states and Cianetti et al. (2018) consider 'democratic backsliding' in CEE, beyond Hungary and Poland. The European Economic and Social Committee (2021) has reported on civic dialogue and participatory democracy in the EU.

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Weiler, J.H.H. (1995) 'Does Europe need a constitution? Reflections on *demos*, *telos*, and the German Maastricht decision', *European Law Journal*, 1/3: 219–58.

▶ WEB LINKS

https://ipexl.secure.europarl.europa.eu/IPEXL-WEB/

The Platform for EU Interparliamentary Exchange (IPEX) facilitates the exchange of information between national parliaments and the EP concerning EU-related issues.

http://www.votewatch.eu

For data about voting in both the EP and the Council.

https://europa.eu/citizens-initiative/

The website of the European Citizens' Initiative.

https://www.ombudsman.europa.eu

The website of the EU Ombudsman.

The European political parties each have websites detailing their policies:

https://www.aldeparty.eu

Alliance of Liberals and Democrats for Europe.

https://ecpm.info

European Christian Political Movement.

https://ecrparty.eu

European Conservatives and Reformists.

http://www.democrats.eu

European Democratic Party.

https://e-f-a.org

European Free Alliance.

https://europeangreens.eu

European Greens.

https://www.epp.eu

European People's Party.

https://www.id-party.eu

Identity and Democracy Party.

https://www.european-left.org

Party of the European Left.

https://www.pes.eu

Party of European Socialists.

Access the online resources to take your learning and understanding further, including self-test questions with instant feedback, web links, a flashcard glossary, and updates on new developments in EU politics.

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PART III

THE EU: WHAT DOES IT DO?